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Technical Report No. 15

The Emergence of the Regulatory State in Canada, 1867-1939

Carman D. Baggaley
Economic Council of Canada

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TECHNICAL REPORT NO. 15

THE EMERGENCE OF THE REGULATORY STATE IN CANADA, 1867-1939

by

Carman D. Baggaley
Economic Council of Canada

The findings of this Technical Report are the personal responsibility of the author, and, as such, have not been endorsed by members of the Economic Council of Canada.

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RÉSUMÉ

Nous vivons dans une société que plusieurs considèrent surréglementée. Cependant, il est surprenant de constater que nous ne connaissons que peu de choses au sujet de la façon dont la réglementation publique a été imposée et des raisons que l'ont motivée. La présente étude a pour but de répondre à ces deux questions. L'auteur étudie l'origine de la réglementation au Canada et il en retrace la croissance jusqu'en 1939. En cours de route, il établit certains parallèles avec ce qui s'est fait aux États-Unis. Il met l'accent sur la période après 1900 car, comme il le souligne, c'est à compter de cette date qu'est graduellement apparue la réglementation moderne.

L'auteur aborde le sujet dans une optique surtout descriptive et historique. Il passe outre intentionnellement à des questions telles que le coût de la réglementation et son efficacité. Il s'attarde à expliquer les circonstances qui ont entouré l'adoption des statuts réglementaires fédéraux, en particulier ceux qui ont trait aux transports, au commerce des céréales, à l'industrie laitière, à la mise en marché des produits agricoles, à l'hygiène et à la sécurité, à la conservation, à l'exploitation des ressources et aux assurances.

L'examen théorique de la réglementation est limité au chapitre 1 et à la conclusion. Cette dernière contient des explications au sujet de la croissance de la réglementation, et les motifs habituels de la réglementation servent également à justifier l'adoption de lois particulières. Enfin, l'auteur arrive à la conclusion que, même si la raison de l'intérêt privé semble offrir la meilleure explication pour l'adotion de la plupart des statuts, il ressort de la tendance générale qu'on ne peut rendre compte de la croissance de la réglementation au Canada sans faire appel aux grands objectifs sociaux, politiques et culturels propres à notre pays.

SUMMARY

We live in a society that many people think is over-regulated; yet we know surprisingly little about how or why most government regulation was introduced. The purpose of this study is to provide answers to these two questions. It examines the origins of regulation in Canada and charts its growth up to 1939. Along the way it draws several parallels with the American experience. Attention is focussed on the period after 1900 because, as the study argues, modern regulation did not emerge until after that date.

The approach taken in the study is primarily descriptive and historical. Issues such as the cost of regulation and its effectiveness are largely ignored. Emphasis is placed on explaining the introduction of federal regulatory statutes, particularly those dealing with transportation, the grain trade, the dairy industry, the marketing of agricultural products, health and safety, conservation, resource development and the insurance industry.

Theoretical discussion of regulation is limited to Chapter One and the Conclusion. In the Conclusion explanations are offered for the growth of regulatory activity and the standard rationales for regulation are used to explain the introduction of specific acts. The study concludes that, although private interest rationales seem to offer the best explanation for the introduction of most of the individual statutes, the larger pattern suggests that the growth of regulation in Canada cannot be explained without reference to broad social, political and cultural goals unique to this country.

INTRODUCTION

In the introduction to his recent study of the regulation of Canadian television broadcasting, Robert Babe refers to Gabriel Kolko's two well-known books on the origins of regulation in the United States.[1] He does this, he explains, because, "The historical literature in Canada is not sufficiently developed to permit generalized conclusions regarding factors explaining the origins of regulation in Canada."[2] This study is a modest attempt to overcome the deficiency noted by Babe. Its primary purpose is to trace the emergence of the regulatory state in Canada.

While it is true that there is nothing in the historical literature in Canada to compare with Kolko's books, there are a number of studies that discuss, in varying detail, specific aspects of regulation.[3] In particular, the last few years have witnessed a renewed interest in political economy and much of the work that has been produced as a result of this revival offers valuable insights into the origins of regulation in Canada. As a glance at the footnotes indicates, this study draws heavily on this body of scholarship. However, as scholarly as most of this work is, it does suffer from one weakness. Appropriately, it concentrates on the interventionist role assumed by the state, but in doing so, it fails to distinguish between the various ways in which the state has intervened to influence economic behaviour. It is necessary to distinguish between tax expenditures and loan guarantees; tariffs and subsidies; and government ownership and regulation. It is only by doing so that one can appreciate the complexity of the role of the state in the economic life of Canada. This study concentrates on regulation, but it is not limited to a discussion of regulation. In order to examine regulation in the larger context of government policy, one has to look at its relationship to the other forms of intervention.

Economic regulation has been defined as, "the imposition of rules by a government, backed by the use of penalties, that are intended specifically to modify the economic behaviour of individuals and firms in the private sector."[4] This definition covers a great deal: it includes regulation by the federal, provincial and municipal governments; it includes regulatory statutes and regulations issued under the authority of an act; and it includes regulation by the Cabinet and by specialized commissions. This study has a more limited scope. It deals primarily with federal regulation. The choice was dictated in part by the existing literature on regulation, and in part by the greater visibility of federal regulation during the period being studied. It also concentrates on regulatory statutes rather than specific regulations, or statutory instruments.[5] This approach does involve certain dangers. A regulation or an amendment to a regulation issued under the authority of an existing act can have far greater impact than the passage of a regulatory act. In this sense the study deals as much with political activity as it does with regulatory activity. Nor was the passage of most of the acts followed up to see whether they were enforced. However, even in cases when they were not enforced it does not necessarily mean that such acts were without importance. They may have been passed because of their symbolic value or they may have been intended as a threat. The focus then is on the political process rather than the administrative process (the chapter on the regulation of transportation is something of an exception).

The structure of the study is straightforward. The first two chapters are complementary: Chapter One provides an overview of the role of the state in Canada and offers a brief introduction to regulation; Chapter Two surveys the social, economic and political developments in the period being studied. Together they provide the background for the rest of the study. In Chapter Three the regulation of transportation is discussed separately because of the historical importance of transportation in the Canadian economy, and because it so clearly reveals the forces that have shaped the development of regulation in Canada. The fourth and fifth chapters examine selected areas of regulation with particular emphasis on the regulation of agriculture, the marketing of agricultural products, health and safety regulation, early "environmental" regulation, and the "Bennett New Deal." Chapter Six examines the impact of federalism on the regulatory process. Finally, the conclusion offers a number of observations about the emergence of the regulatory state.

NOTES

1. Gabriel Kolko, *The Triumph of Conservatism* (Chicago: Quadrangle Books, 1967, first published in 1963), and *Railroads and Regulation, 1877-1916* (New York: W.W. Norton & Company Inc., 1970, first published in 1965).

2. Robert E. Babe, *Canadian Television Broadcasting Structure, Performance and Regulation* (Ottawa: Economic Council of Canada, 1979), p. 5.

3. The more important studies include, Vernon C. Fowke, *The National Policy and the Wheat Economy* (Toronto: University of Toronto Press, 1973, first published in 1957) and *Canadian Agricultural Policy: The Historical Pattern* (Toronto: University of Toronto Press, 1946); C.F. Wilson, *A Century of Canadian Grain* (Saskatoon: Western Producer Prairie Books, 1978); Frank W. Peers, *The Politics of Canadian Broadcasting, 1920-1951* (Toronto: University of Toronto Press, 1969) and *The Public Eye: Television and the Politics of Canadian Broadcasting, 1952-1968* (Toronto: University of Toronto Press, 1979); E.P. Neufeld, *The Financial System of Canada: Its Growth and Development* (Toronto: Macmillan of Canada, 1972); A.W. Currie, *Economics of Canadian Transportation* (Toronto: University of Toronto Press, 1959, first published in 1954); Alvin Finkel, *Business and Social Reform in the Thirties* (Toronto: James Lorimer and Company, 1979); Tom Traves, *The State and Enterprise: Canadian Manufacturers and the Federal Government, 1917-1931* (Toronto: University of Toronto Press, 1979); and H.V. Nelles, *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941* (Toronto: Macmillan of Canada, 1974).

4. Margot Priest, W.T. Stanbury and Fred Thompson, "On the Definition of Economic Regulation," in W.T. Stanbury (ed.) Government Regulation: Scope, Growth, Process (Montreal: The Institute for Research on Public Policy, 1980), p. 5.

5. See Margot Priest and Aron Wohl, "The Growth of Federal and Provincial Regulation of Economic Activity, 1867-1978," in Government Regulation..., op. cit., pp. 69-150. It should be noted that Priest and Wohl's definition of a regulatory statute is more rigorous than the one used in this study.

Chapter 1

REGULATION AND THE STATE IN CANADA

(1) The Role of the State in Canada

Regulation is just one type of government intervention. In order to understand the specific form it might help to examine the larger pattern. It is a generally accepted belief that the state has played a prominent role in the economic life of Canada.[1] As Alexander Brady has so strikingly asserted: "The role of the state in the economic life of Canada is really the modern history of Canada...."[2] We will begin by examining various attempts to explain the role of the state, then we will turn to a discussion of regulation and, finally, we will look at some of the factors that have shaped the emergence of the regulatory state in Canada.

(i) The Staple Approach

One of the most persuasive explanations for the role that governments have played in Canada is based on the staple approach to economic development, as presented by Harold Innis and W. A. Mackintosh and built upon by people such as Donald Creighton and Hugh Aitken.[3] It emphasizes the importance of geography,[4] staples - fish, timber, wheat, etc., - and transportation. According to Aitken:

> The role of the state in Canadian development has been that of facilitating the production, and export of these staple products. This has involved two major functions: planning and to some extent financing the improvement of the internal transport system; and maintaining pressure on other governments to secure more favourable terms for the marketing of Canadian exports.[5]

Government intervention has been as much a part of our economic history as the export of staples and it has occurred in conjunction with the emergence of new staples. In the days of the fur trade based on the St. Lawrence-Great Lakes system, Canada was a natural economic unit, but with the decline of "the commercial empire of the St. Lawrence" and the development of new staples, it became necessary to impose unity by building new transportation systems. First, canals were dug to make the St. Lawrence-Great Lakes system navigable; then the Grand Trunk Railway was built; and when Canada expanded westward the Canadian Pacific Railway was constructed. Government assistance was provided at every stage. These projects were explicitly intended to integrate the country by facilitating the movement of staples through Canada. The fact that Canadian development lagged behind that of the United States added a nationalist imperative to government intervention.

(ii) An Ideological Explanation

In contrast to this materialist explanation, others have stressed the importance of ideology. Building on Louis Hartz's theories on the founding of new societies, Gad Horowitz points to the important role played by the Loyalists who came to Canada after the American Revolution bringing with them a significant "Tory touch" as part of their cultural baggage. This trace of the Tory organic view of society flourished in pre-Confederation British North America making it possible for Canada to develop both a socialist tradition and a true conservative tradition, as opposed to the American "rugged individualism" type of conservatism. According to Horowitz, the presence of both these traditions in a primarly liberal political culture produced a greater willingness to use the state to develop and control the economy.[6] George Grant also points to the Loyalists as a key factor in the development of the interventionist ideology although he adds an important political qualification:

> Until recently, Canadians have been much more willing than Americans to use governmental control over economic life to protect the public good against private freedom. To re-

> peat, Ontario Hydro, the CNR and the CBC were all established by Conservative governments.[7]

(iii) The Pluralist Model

Both of these explanations emphasize differences between Canada and the United States: the first by stressing the greater role of staples and the defensive nature of government intervention; the second by stressing ideological differences. Other explanations minimize the uniqueness of the Canadian experience. For example, the pluralist model is held to be applicable to most liberal democracies. It views the state as a neutral referee adjudicating disputes between the competing interest groups that make up society. Although the businessmen, farmers, trade unionists, ethnic minorities, etc., who make up these interest groups can attempt to secure political favours by lobbying, promising votes and giving financial assistance, the various demands on the supply of favours are such that no group always gets the type or amount of desired government action. At least one historian thinks that this is an accurate description of what took place in the period being studied. In explaining the inability of businessmen to win certain political concessions, Michael Bliss has argued: "These political frustrations of the business classes - and there were many of them - were simply the consequence of the Canadian political system's responsiveness to the desires of a plurality of interest groups."[8] The pluralist model emphasizes the political process and it suggests that it is through the balancing of competing interests that the public interest can be best achieved.

(iv) The Corporatist Model

More recently, a corporatist model of the role of the state has emerged. Like pluralism it posits the existence of well-organized interest groups although it assumes that they are more powerful and less numerous. It sees the state not as an all powerful referee, but as one of the participants in the policy-making process. For example, Robert Presthus, who was one of the first people to apply the model to Canada, suggests that, "major decisions regarding national socio-economic policy are worked out through interaction between governmental (i.e., legislative and bureaucratic) elites and interest group elites."[9] Elsewhere, a corporatist system has been defined as:

> one where the state properly functions as co-ordinator, assistant and midwife rather than director or regulator. In such a system there are deep interpenetrations between state and society, and enjoying a special status is an enlightened social elite....[10]

The key elements in the concept of corporatism are elite accommodation, the avoidance of interest group conflict, and the visible participation of interest groups in the policy-making process. There is nothing uniquely Canadian about the corporatist model. Although Presthus points out differences between Canada's political culture and that of the United States, such as our more "traditional and deferential patterns of authority,"[12] he concludes that policy outcomes in the two countries are very similar.[13]

(v) The Neo-Marxist Explanation

Those who examine the role of the state from a leftist or neo-Marxist point of view would suggest that pluralist view is foolishly naive, the Horowitz-Grant view hopelessly idealistic, while the staple approach and the corporatist view each contain a few grains of truth. Society may be made up of a collection of interest groups but they do not compete equally. Business interests, it is argued, are so powerful and politicians so sympathetic, or so weak, that they are able to use the power of the state to expand and legitimize their economic power. As H.V. Nelles explains in his study of resource development in Ontario:

> The rhetoric of free enterprise notwithstanding, business could not get along without the active co-operation of the state. From the

> exploration phase up through reorganization and concentration the state had to serve as an understanding accomplice. The values that guided intervention in Ontario during the first half of this century have been basically those of its business clients. This, of course, was the normal state of affairs in a continental, advanced capitalist context.[14]

This type of relationship between the state and business interests has been referred to as political capitalism or state capitalism.[15] It implies that government intervention did not further the public interest; instead, it subverted it.

More interpretations could be offered,[16] but these are sufficient to indicate the diversity of opinion. They are of more than arcane interest, each offers some insights which can be pursued in the study of regulation. They are particularly useful insofar as they point out ways in which the Canadian experience has differed from that of the United States. The interventionist role assumed by the Canadian state has significant implications. Capture theories of regulation borrowed from the United States seem less relevant in a country where the state has done so much to assist private enterprise. As Douglas Hartle has remarked, "one cannot capture that which has already been surrendered."[17] The interventionist state has also created public corporations such as the CBC and CNR which compete with private corporations. This is a situation with which the American regulator does not have to cope. Such interpretations are also useful in that they suggest reasons for the introduction of regulation.

(2) Regulation as a Governing Instrument

Government regulation is just one of several governing instruments the state can use to alter economic behaviour.[18] In addition to regulation, the state can use the tax system (which includes tax expenditures, e.g., tax write-offs), direct expenditures (subsidies, transfer payments, gifts of land), government ownership, or loans (or loan guarantees). Governments in Canada have made ample use of all of these instruments. The same result can frequently be achieved by using different instruments although some forms of intervention have distinct advantages. For example, if a government wishes to limit the pollutants that a firm is emitting into the air, it can give the company an interest-free loan to pay for the cost of installing new equipment to reduce emissions; it can use the tax system and allow the firm to write-off all or part of the cost of installing the new equipment; or, it can pass legislation, or issue a regulation under existing legislation, forcing the firm to meet prescribed standards. Each of these solutions might be equally effective, and all of them would impose costs on the taxpayer (regulation is by no means costless). However, even if the economic costs and benefits were the same, regulation has political benefits which the other methods lack. One advantage of regulation over some of the other forms of intervention is that the costs to the taxpayer are hidden. Another advantage is that the use of regulation makes a government appear decisive. It is a high-profile way of achieving objectives that can usually be achieved by other means. It is not surprising in an era of image-conscious politicians that government regulation is proliferating.[19]

It is also useful to distinguish between regulation and other governing instruments in order to be more precise about the role of the state in our economic life. As was discussed above, it is a widely shared belief that governments in Canada have been more willing than their American counterparts to use the power of the state to alter economic behaviour. However, it would seem that this belief is based largely on the greater use in Canada of government ownership and non-regulatory schemes to redistribute income. It is not clear that regulation has been used any more extensively in Canada than it has in the United States. A recent study by W.T. Stanbury and Fred Thompson concludes that although the proportion of the Gross Domestic Product presently subject to direct regulation (price, entry and/or output controls) is slightly higher in Canada, "both the what and the how of regulation are less burdensome to business in Canada than in the United States."[20] They point out that the only Canadian federal regulatory agencies with no American federal counterparts are the Foreign Investment Review Agency, the Canadian Saltfish Corporation and the Freshwater Fish Marketing Corporation.[21] In the period 1890-1939 there was more disparity in the areas of economic activity subject to regulation in the two countries, but overall, the use of government regulation in Canada does not appear to have been significantly greater.

(3) Defining Regulation

Before going any further it is necessary to explain what is meant by the term "regulation." It has already been defined as an instrument of public policy designed to alter economic behaviour. It differs from other such instruments in that it makes use of the police power of the state. Regulation often involves the state telling a firm or individual that certain activities are prohibited: operating a taxi without a license; charging a fee above a fixed rate; selling a product in a certain type of package; or earning more than a specified rate of return. However, regulation does not consist simply of policing. The activities of firms and individuals are constrained in order to achieve positive objectives. For example, Canadian content regulation was introduced to encourage Canadian culture rather than to police the activities of broadcasters. As this example suggests, regulation can be introduced to achieve goals that are broadly social as well as goals that are strictly economic. Even though the desired objective is social, this type of intervention can still be considered as regulation since the constraint on the broadcaster is economic.

The definition of regulation offered above is inadequate. A more useful definition has been offered by Margot Priest *et al.* in a study for the Economic Council. They define economic regulation as, "the imposition of rules by a government, backed by the use of penalties, that are intended specifically to modify the economic behaviour of individuals and firms in the private sector."[22] As well as defining regulation, one can distinguish between types. The Economic Council's interim report, Responsible Regulation, distinguishes between direct regulation, the regulation of "one or more of price, rate of return, output, entry, and/or exit" and social regulation, regulation "aimed at controlling the attributes of a product or service, at the disclosure of information, at influencing methods of production or at influencing conditions of sale or employment."[23] Other writers distinguish between economic and social regulation, or between old and new regulation.[24]

(4) Rationales for Regulation

(i) The Public Interest

(a) The Traditional Explanation

More relevant for the purposes of this study is the question of why regulation is introduced.[25] Until fairly recently the answer would have been given in terms of protecting the public interest.[26] This rationale has often been used by politicians. The Adulteration of Foods Act (1884) was justified on the grounds that it was "in the interest of public honesty, in the interest of the protection to health, in the interest of the life of our children."[27] The public interest rationale has even enjoyed a certain amount of academic respectability. In 1941, J.A. Corry explained the creation of regulatory bodies such as the Board of Transport Commissioners (now the Canadian Transport Commission) as follows:

> The legislature has decided on some objective. Its attention has been turned to some economic or social malaise which it thinks can be eased or cured by taking action. But because of the technical nature of the prob-

> lem or because it is unable to foresee the circumstances to be encountered in actual administration, it cannot give a precise definition of the action which officials are to take. So it establishes a board or commission which can bring expert judgement to bear on the difficulties and give single-minded attention to the problem as a whole. The board is given power to make rules and regulations which have the force of law.... Boards are authorized to act as detectives and public prosecutors. Many of their most exasperating powers are given them for this purpose. And sometimes even more salutary measures, such as the revoking of licenses and the closing of plants, are authorized to ensure that the practices struck at will be abandoned.[28]

The public interest rationale suggests that a government's attention is drawn to some social or economic evil as a result of a public outcry, a scandal, a Royal Commission study, or a careful evaluation of a situation by the politicians themselves. The government responds by introducing government regulation to deal with the problem. It is assumed that the consumer or general public benefits as a result of lower prices, safer products, better service, etc.

The public interest rationale has been used frequently to justify the regulation of utilities. Utilities have two characteristics which make them obvious candidates for regulation: they are often monopolies; and they provide services considered to be essential. For these reasons they have been characterized as businesses "affected with a public interest."[29] The phrase pre-dates utilities as we know them, it goes back to at least 1670 when it was used by Matthew Hale, an English jurist. It was "rediscovered" in 1877 and subsequently employed by American jurists in their attempt to limit government regulation to businesses they considered to be so affected. As Justice Oliver Wendell Holmes noted in 1927, this attempt to develop a legal rationale for regulation was not a complete success:

> the notion that a business is clothed with a public interest and has been devoted to the public use is little more than a fiction intended to beautify what is disagreeable to the sufferers. The truth seems to be that, subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a sufficient force of public opinion behind it....[30]

The argument that some businesses are "affected with a public interest" was used in Canada but, for reasons that will be discussed below, it did not take on the same importance that it did in the United States.

(b) Allocative Efficiency (Remedying Market Failures)

A major difficulty with the public interest rationale is that the concept of "the public interest" is impossible to define with any precision. Many economists prefer to avoid the concept and would explain the introduction of regulation in terms of the need to control or correct market failures in order to improve allocative efficiency. Two of the most commonly cited examples of market failure are natural monopoly and destructive competition.[31] The traditional justification for regulating a natural monopoly is to prevent the monopolist from producing a sub-optimal output and raising prices. Regulation usually consists of some degree of control over prices. The traditional justification for regulating an industry experiencing destructive competition is to prevent a deterioration in the quality of service, to protect the firms in the industry and, to a lesser extent, to protect the workers. The usual regulatory response is to restrict entry.[32]

There are other types of market failure such as imperfect information, externalities, and common property resource problems. The market system assumes that the buyer knows what he is purchasing. This is not always the case, the buyer's knowledge can be limited by an inability to judge the quality of a product, by the type of packaging or by any number of other factors. Regulation can insist that certain standards of quality be met and that the size and contents of packages be specified. The market system also assumes that all the costs are included in the price of the product. In fact, many transactions impose social and economic costs which affect those who in no way benefit from the transaction. Such costs are referred to as externalities. The destruction of the environment is one obvious externality. Regulation can attempt to internalize this externality by forcing factories to reduce pollution. This requires an expenditure on the part of the factory which gets internalized into the cost of its products. Finally, regulation can be employed to control the use of common property resources such as fisheries in order to protect common property rights.

The allocative efficiency rationale is essentially a more rigorous formulation of the public interest rationale.[33] Its advantage lies in the fact that allocative efficiency is an economic rather than a philosophical concept making it easier to define and measure. The allocative efficiency rationale is based on the assumption that in the absence of market failures competition will produce an optimal allocation of resources. When this occurs the consumer and society as a whole benefit because all factors of production are being used efficiently; the output of goods and services is maximized; only normal profits are being earned; and, ultimately, consumer satisfaction is maximized. According to this rationale the purpose of regulation is to correct market failures in order to make the economy operate more efficiently (in economic terms).

Although the allocative efficiency rationale is basically the traditional public interest rationale re-cast in economic terms it is necessary to distinguish between them. In certain situations one could use a public interest rationale to justify regulation that is inefficient in economic terms. For example, regulated utilities are sometimes instructed to charge rural users the same rate as urban users even though the cost of providing the service is higher in rural areas. This is justified on the grounds of equity. In a similar vein, some users, such as senior citizens, are charged less for services even though the costs are the same for all customers. This has been described as "taxation by regulation"[34] since the task of redistributing wealth is one that we usually associate with taxation.

Almost any instance of regulation that can be explained in terms of protecting the public interest can be explained in terms of allocative efficiency. Thus the requirement that the weight, ingredients and nutritional content of cereal be given on the package can be explained in terms of correcting information imperfections.[35] With this additional information at their disposal, consumers should make market decisions that are more efficient. In fact, there is no guarantee that such regulation improves efficiency. Because it is difficult to determine how many people will use the information and because it is possible that the marginal cost of printing the information on the extra packages is less than the cost of leaving some of them blank, it is easier and perhaps less costly to provide all consumers with the information. This means that there is an excess supply of information and all consumers have to "buy" the information whether they want it or not. In this situation and in other situations where blanket regulation is used it is possible that the costs outweigh the benefits leading to an overall decrease in allocative efficiency.

The observation that regulation decreases rather than improves allocative efficiency can be explained in different ways. One could argue that the difficulties involved in choosing the best regulatory solution are so great that regulation sometimes fails. One could reject the allocative efficiency rationale and return to the public interest rationale. (It is in the public interest to require child-proof caps on all bottles containing dangerous products even if such a measure is not efficient in economic terms.) Or, one could reject both explanations in favour of a private interest rationale.

(ii) Private Interest Rationales

When one begins to look at the reasons why specific regulatory acts were introduced, one soon discovers rationales that have little to do with either allocative efficiency or most concepts of the public interest. Until Gabriel Kolko took a close look at the introduction of federal meat inspection legislation in the United States it was assumed that this was a classic example of regulation introduced to "protect the public interest." Before the legislation was introduced the consumer's information was limited (one cannot always judge the quality of meat by looking at it, nor does one know what goes on in packing houses). When Upton Sinclair's The Jungle made people aware of the deplorable situation in the packing houses a demand arose for government action and as a result the Meat Inspection Act was passed. According to Kolko, this is not what happened. Two other factors were involved: packers needed a government seal of approval to supply the lucrative European market and large packers wanted a type of inspection that would include the smaller packers removing their competitive advantage. The packers get what they wanted, at government expense, while some domestic consumers continued to eat tainted meat.[36] Kolko does not see this as an isolated case. More controversially, he has argued that railroads "were the single most important advocate of federal regulation from 1877 to 1916."[37] These examples suggest that private interest rather than the public interest is a major reason for the introduction of regulation.

Critics of capitalism such as Kolko explain the introduction of regulation as just one more example of the ability of business interests to use the power of the state to further their own interests. The result, according to Wallace Clement, is that

"State regulation most often means the state's guarantee of profitability and high concentration."[38] Surprisingly enough, some staunch defenders of capitalism have a similar view of regulation, and they often refer to Kolko's work as evidence.[39] George Stigler, a well-known member of "the Chicago school" of economists argues, "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit."[40] Despite this area of agreement, the two groups disagree on the proper role of regulation. While many critics of capitalism would argue that in the right hands regulation can, and should, be used to control and plan economic activity, Stigler and his associates believe that the public would be best served by deregulation since regulation is an inferior substitute for the unfettered operation of the market system.

In a recently published collection of his essays, Stigler explains how he arrived at the conclusion that regulation is usually acquired by an industry. After pointing out that two of his studies on the effects of regulation indicated that the regulation in question did not achieve their announced goals, he goes on to argue:

> It seems unfruitful, I am now persuaded, to conclude from the studies of the effects of various policies that those policies which did not achieve their announced goals, or had perverse effects (as with a minimum wage law), are simply mistakes of the society.... I now think, for example, that large industrial and commercial users of electricity were the chief beneficiaries of the state regulation of electrical rates (and in our essay there is some unintentional evidence supporting this hypothesis).
>
> This line of thought leads directly to the view that there is a market for regulatory legislation - a political market, to be sure. Some groups (industries and occupations) stand to gain more than others from boons the state can confer, such as subsidies, control of entry of new firms, and price control - just as some industries gain more than other industries from forming a cartel. Again,

> some groups are better able than others to mobilize political power, whether through votes or money. Where high benefits join low costs, there we should expect early and strong public regulation.[41]

According to Stigler, regulation is not imposed on industry or occupational groups by well-intentioned politicians as the traditional public interest and allocative efficiency rationales suggest; instead, it is sought by industry. Industry seeks regulation because, "The state has one basic resource which in pure principle is not shared with even the mightiest of its citizens: the power to coerce."[42] Regulation is "purchased" from calculating, self-interested politicians with votes and resources and therefore the groups with the most votes and resources will get the most regulation.[43] However, since it is assumed that groups act rationally, they will only purchase regulation when the anticipated benefits are greater than the costs.

Interest groups seek regulation because they expect to benefit. Benefits can take many forms such as higher profits or income or, more indirectly, they can take the form of the elimination or reduction of uncertainty. Uncertainty can be the result of short-term, specific concerns such as price fluctuations or factor costs or it can be the result of long-term, general concerns such as social instability, political unrest or legitimization. Minimizing uncertainty is a normal part of business, "it may be argued that entrepreneurial strategy in general may be described in terms of techniques to reduce uncertainty to the level of risks against which appropriate action may be taken...."[44] Industry or occupational groups can seek regulation that limits entry, lessens the impact of economic and technological change, establishes quotas or restricts competition as a way of reducing the first type of uncertainty. Some regulation that in the short-term imposes costs on industry or restricts industry's freedom of operation can in the long-term work to reduce uncertainty. The regulation of working conditions and workmen's compensation schemes reduce the threat of social instability.

Anti-combines legislation can legitimize big business without seriously affecting it. This does not mean that industry sought anti-combines legislation, but it might help to explain why industry has not always opposed regulation with the vigour one might have expected.

To summarize, two broad rationales for regulation can be suggested: (i) the state imposes regulation on industries or occupations to protect the public interest; and (ii) interest groups acquire regulation or shape regulatory practices to further their own ends. Each of these rationales can be expressed in a number of different forms. As we have seen, the public interest rationale can be expressed in the traditional, non-economic terms of the historian or the political scientist or, more rigorously, it can be expressed in terms of allocative efficiency. The public interest rationale suggests that regulation is to be used as an alternative to competition in those situations in which market forces fail to produce socially desirable results. The private interest rationale also appears in several different guises. The neo-Marxist explanation with its emphasis on the interrelationship of the corporate and political elites and George Stigler's "economic theory" with its emphasis on the forces of supply and demand are two well-known forms of the private interest rationale. They both suggest that rent creation is the primary motive for seeking regulation. Other explanations shift the emphasis to risk aversion. Bruce Owen and Ronald Braeutigam argue that, "Regulation exists in order to slow down the rate at which the free market redistributes income, thus reducing the market risks by voters."[45]

Rationales for regulation are not mutually exclusive in the sense that a specific type of regulation must fall into one of the categories. There are instances in which regulation that benefits a certain group in society is perceived to be in the public interest. Two examples come to mind. The agricultural community has in the past sought regulation to limit production and fix prices through supply management marketing boards. Marketing boards definitely benefit farmers and yet they have received widespread public support despite persistent criticism by economists and horror stories about rotting eggs. They are considered to be in the public interest, not because they are an efficient means of allocating resources (such schemes create inefficiency) but because it is assumed that agriculture is a virtuous activity (the family farm needs to be preserved, etc.), the existence of which somehow makes us all better people.[46] Similarly, Canadian content requirements benefit Canadian artists, the Canadian recording industry, etc., but they are defended by people who have no direct interest on the grounds that such requirements are necessary to protect Canadian culture.

(5) Regulation in the Canadian Context

Most theories of regulation have been developed by American economists and political scientists who understandably based their work on the evidence at hand. Unfortunately, these theories have been imported into Canada with little regard for the differences between the two countries. Some types of regulation, such as licensing taxi-cabs or controlling the sale of hazardous products, are common to both countries, but others, such as Canadian content regulation, are unique. It is possible to argue that the protection of the Canadian culture rationale is just a smokescreen for certain interests (the Canadian recording industry, for example) who benefit from such regulation; however, it is more profitable to admit that some regulation has been introduced in Canada for reasons that are typically Canadian. The desire to protect our culture is only one of the factors that has made our experience with regulation different from that of the United States. The rest of this chapter will consist of a discussion of other factors that shaped the development of regulation in Canada in the period up to 1939.

(i) The Legal Climate

In the absence of constitutional protection of rights and judicial review, the power of the legislature in Canada is almost unlimited. As a result, the concept of a business being "affected with a public interest," which formed the legal basis for government regulation in the United States, was unnecessary in Canada. As Christopher Armstrong and H.V. Nelles point out, the absence of constitutional protection for property, as provided in the United States by the Fourteenth Amendment, significantly altered the rules of the game in Canada.[47] Early in this century, when the "due process of law" clause was being interpreted broadly, American businessmen were able to turn to the courts for protection.[48] Canadian businessmen did not have this option[49]; instead, they tried to play one level of government off against the other. Sometimes they succeeded, but more often than not they failed. In desperation, some Canadian businessmen began to discuss ways in which they might get the constitution amended. In 1911, B.E. Walker, President of the Bank of Commerce, even suggested pressure from abroad, "... a complaint from those who represent capital in the United States would seem to be a most natural way in which to bring about consideration of the subject by the Government at Ottawa."[50]

Not only were Canadian businessmen unable to turn to the courts to get regulatory statutes overturned, they were usually unable to appeal regulatory decisions to the courts. Appeals to the courts, which have delayed regulatory decisions and made the whole American regulatory process more burdensome, have been noticeably less evident here. This did occur by accident, when the Board of Railway Commissioners was created in 1903, a conscious decision was made to limit the appeal process. (However, courts in Canada, and the Judicial Committee of the Privy Council in Great Britain, have played a major role in shaping the regulatory process by ruling on issues of regulatory jurisdiction.[51]) In place of judicial appeal, we have appeals to Cabinet. As a result, the independent regulatory agency of American literature does not exist in Canada.[52]

(ii) Regionalism

Regional and provincial pressures have also shaped the regulatory process. Regionalism is inherent in Canada; it has been present since the beginning. The desire to rid British North America of regionalism, or sectionalism as it was then called, was one of the motives behind Confederation. The attempt failed; regionalism survived and even flourished. It survived for several reasons: the development of new staples which accentuated regional differences and strengthened the provinces' bargaining position; a number of Judicial Committee of the Privy Council decisions which strengthened the provinces' constitutional position[53]; and the realization by provincial politicians that one of the easiest ways to get elected was by attacking Ottawa. The development of regulation has been affected in two ways: it was introduced on occasion to pacify regional grievances; and it became one of the areas of dispute between the federal and provincial governments. Today's disputes over the regulation of off-shore resources and cable television are simply new forms of an old argument.

(iii) The Interventionist State

It is easy to exaggerate the willingness and farsightedness with which Canadian politicians have intervened in the economy. The government of Upper Canada became involved in the construction of the Welland Canal only after the attempt to build it with private capital failed and the federal government created Canadian National Railways with considerable reluctance after investigating the alternatives. Although the Railway Committee of the Executive Council dates from 1851, effective railway regulation did not begin until after the creation of the Board of Railway Commissioners in 1904. More often than not, government intervention in the nineteenth and early twentieth centuries consisted of loan guarantees, gifts of land, forgivable loans and, of course, the tariff. Still, compared to the United States, government intervention has been more prevalent in Canada.

The presence of Canadian National Railways, the Canadian Broadcasting Corporation, Trans-Canada Airlines, Ontario Hydro, provincially-operated telephone systems and numerous municipally-owned utilities did affect the development of regulation in Canada. On the one hand, they lessened the demand for regulation; on the other hand, they made the task of regulation more complex. (The Canadian regulatory experience is unique in the extent to which regulation is piled on top of government ownership.) In a larger sense, the existence of so many examples of government ownership should make us question the role of regulation in Canada. Few of these enterprises can be justified on the grounds that they promoted competition or the efficient allocation of resources. Government intervention in Canada, whether in the form of financial assistance for the construction of the Canadian Pacific Railway in the 1880s; the creation of the CBC in the 1930s; or the regulation of cable television in the 1970s has more often restricted competition. Turning a blind eye to corporate takeovers, protecting inefficient industries and propping up failing businesses are all part of the Canadian tradition of government intervention. Perhaps then, the argument that the object of regulation is to promote competition and the efficient allocation of resources has limited application in Canada. If other forms of government intervention have rarely been used to achieve these goals, why should we expect that regulation has been used any differently?

(iv) The Political Environment

Politicians in the two countries operate within different political systems. Both Canada and the United States are federal states, but the balance between the central and local governments differ in the two countries. The Canadian federal government, for example, cannot match the American federal government's power to regulate interstate trade. Differences between the parliamentary and congressional systems of government are also important. Regional and interest group pressures operate at different points in the two countries. In the parliamentary system the real debates frequently take place in Cabinet meetings and caucus rooms, or between interest groups and the bureaucracy rather than on the floor of the House. Because party discipline is weaker and political power less centralized in the American political system there is more room for individual initiative. In the United States, crusading politicians seeking popular issues, and re-election, have played an important role as advocates of regulation.[54] In particular, this has been the case in periods of social unrest such as the Progressive era (roughly 1900 to 1914), the 1930s and the 1960s and early 1970s when some politicians have tried to make a name for themselves as reformers. (Today the equivalent phenomenon is politicians espousing deregulation.) In Canada individual politicians do not have the freedom or influence to operate in this manner and governments cannot react to the national mood as quickly or as easily as individual politicians.[55]

Before leaving this topic, some mention should be made of the relationship between politicians and businessmen. Throughout the period from 1890 to 1939 politicians in Canada shared a close relationship with the business elite. Several important politicians such as R.B. Bennett, A.E. Kemp, a former President of the Canadian Manufacturers' Association who became a member of Robert Borden's Cabinet in 1911, and C.D. Howe who joined Mackenzie King's government in 1935, were prominent businessmen when they entered politics. Others left politics to join the ranks of the business elite. During this period the concept of conflict of interest was painfully being developed: ministers were not expected to divest themselves of these interests upon assuming office[56]; politicians received frequent investment tips from their business friends; and the Prime Minister sought and received advice from business leaders on a regular basis. It is not surprising that scandals involving huge campaign donations; questionable practices in the letting of contracts; and even a provincial government buying a company in which the Premier had an interest, surfaced frequently and disappeared quickly.[57] What is surprising is that despite their close relationship many businessmen distrusted politicians and generally held them in low esteem.

(v) Businessmen and the State

Businessmen did not think that politicians could appreciate their problems. Referring to politicians' attitudes towards mergers the journal of the Canadian Manufacturer's Association complained: "The many lawyers, farmers and doctors who form such an important part of our Parliament, have not had the intimate contact with business, on which alone a sympathetic and intelligent opinion can be based."[58] Politicians were urged to run governments on sound business principles.[59] Businessmen felt that politicians could not be trusted because they were so interested in retaining office that they would abandon the national interest to cater to the demands of special interest groups. Other interest groups were accused of being concerned only with their own selfish ends. As B.E. Walker of the Bank of Commerce explained, "The attitude of the West regarding elevators, freight rates, free trade, etc., is quite natural when one remembers that agricultural people as a rule are both selfish and ignorant."[60] Apparently, central Canadian support for the protective tariff transcended selfishness.

These were matters on which most businessmen whether in Canada or the United States agreed. Collectively, they made businessmen feel they were a beleagured minority operating in a hostile environment.[61] This feeling was probably stronger in the United States where distrust of big business has always been greater, but it was certainly present in Canada. On the political level, this hostility was frequently limited to rhetoric. Even during the so-called "trust-busting era," American presidents embraced the views of businessmen in private while they disavowed their actions in public. Although even the trust-busting rhetoric was more temperate in Canada there was still fears that the Combines Investigation Act (1910) would result in businesses being harassed by demagogues, malcontents and agitators.[62] There were frequent complaints that there was just too much legislation, "Paternalism is being done to death,"[63] and that there were some things it just could not do, "legislation, has its function, but legislation which attempts to limit or pervert great natural laws will defeat its own ends and injure those whom it was designed to benefit."[64] The effects of this legislation on the business community cannot be measured in terms of economic costs alone. There were also the psychic costs: the undermining of belief structures; the perceived loss of status; the doubts raised about the direction of future legislation; and the feeling that freedom of choice was being limited. These psychic costs may have been irrational and impossible to measure, but they were nonetheless real and they did affect businessmen's behaviour.[65]

Coupled with the belief that they were under attack from the rest of the community there was the ever present threat of competition from fellow businessmen. (Of course, honest competition was always praised, it was only unfair competition that was criticized.) They responded to this threat by organized price-fixing, trade associations and seeking regulation. The desired regulation might be closing by-laws forcing merchants to conform to uniform store hours, standardized provincial bankruptcy laws, or the regulation of freight rates. All of these tactics were part of what Michael Bliss has termed "the flight from competition."[66]

Ultimately, the flight from competition was an attempt to cope with uncertainty. It was here that divisions within the business community began to appear. Retailers opposed the price-fixing arrangements of wholesalers, wholesalers opposed the price-fixing arrangements of manufactures, and all three groups disliked the purchasing power of the large department stores. The original request for the Royal Commission on Price Spreads came from the Canadian Manufacturers' Association.[67] There were also divisions between small and large businesses and it has been suggested that much of the criticism of big business emerged, not from the general public, but among small businessmen.[68] Other historians have argued that the crucial division, particularly for the earlier part of the period, was between local businessmen, allied with small manufacturers, and large financiers. Each group attempted to use the power of the state to further their own interests with the first group looking to the provincial governments while the latter group, "came to believe that the central government ought to use its regulatory power to stabilize the economy in accordance with their objectives, in part by controlling the behaviour of the provinces."[69]

When businessmen sought regulation, entered price-fixing arrangements or complained about too much government legislation they were trying to minimize psychic costs as well as economic costs. There was one respect in which the psychic costs of Canadian businessmen differed from those of their American counterparts. They faced an additional uncertainty which exacted its toll and that was the presence of the United States. In addition to worrying about competition from Canadian businessmen they had to worry about competition from American businessmen and the actions of the American government over which they had no control.

NOTES

1. The terms "the state" and "the government" are not synonymous. The state is a collective concept. The Canadian state consists of the federal, provincial and municipal governmments, regulatory agencies and other such bodies.

2. Alexander Brady, "The State and Economic Life in Canada," in K.J. Rea and J.T. McLeod (eds.) *Business and Government in Canada: Selected Readings*, 2nd ed. (Toronto: Methuen, 1976), p. 20.

3. See Harold A. Innis, *The Fur Trade in Canada: An Introduction to Canadian Economic History* (Toronto: University of Toronto Press, 1956, first published in 1930), *The Cod Fisheries: The History of an International Economy* (Toronto: University of Toronto Press, 1978, first published in 1940), and *Essays in Canadian Economic History* (Toronto: University of Toronto Press, 1956); W.A. Mackintosh, "Economic Factors in Canadian History," in W.T. Easterbrook and M.H. Watkins (eds.) *Approaches to Canadian Economic History* (Toronto: McClelland and Stewart, 1967), and *The Economic Background of Dominion-Provincial Relations* (Toronto: McClelland and Stewart, 1964, first published in 1939); Donald Creighton, *The Empire of the St. Lawrence* (Toronto: Macmillan of Canada, 1970, first published in 1937); and Hugh Aitken, "Defensive Expansionism: The State and Economic Growth in Canada," in *Approaches to Canadian Economic History*, *op. cit.* See also Robin Neill's comments on the rebirth of the staple approach, "The Passing of Canadian Economic History," *Journal of Canadian Studies*, Vol. 12, No. 5, Winter 1977.

4. Note Innis' famous comment, "The present Dominion emerged not in spite of geography but because of it," in *The Fur Trade in Canada*, *op. cit.*, p. 393.

5. Aitken, *op. cit.*, pp. 220-21.

6. G. Horowitz, "Conservatism, Liberalism and Socialism in Canada: An Interpretation," in H. Thorburn (ed.) *Party Politics in Canada* (Scarborough: Prentice-Hall of Canada Ltd., 1972).

7. G. Grant, *Lament for a Nation* (Toronto: McClelland and Stewart, 1965), p. 71.

8. M. Bliss, "'Dyspepsia of the Mind': The Canadian Businessmen and His Enemies, 1880-1914," in D. Macmillan (ed.) *Canadian Business History* (Toronto: McClelland and Stewart, 1972), p. 180.

9. R. Presthus, *Elite Accommodation in Canada* (London: Cambridge University Press, 1973), p. 21.

10. E. Hawley, "The Discovery and Study of a 'Corporate Liberalism'," *Business History Review*, Vol. 3, No. 23, Autumn 1978, p. 312.

11. Some people would argue that corporatism is a political form that can only emerge in an advanced capitalist state. See Leo Panitch, "Corporatism in Canada?," in R. Schultz, O.M. Kruhlak and J.C. Terry (eds.) *The Canadian Political Process* 3rd ed. (Toronto: Holt, Rinehart and Winston of Canada, Limited, 1979). Panitch is very critical of Presthus' use of the concept of corporatism. He points out, with some justification, that it is almost indistinguishable from pluralism. See also Craig McKie, "Some Views on Canadian Corporatism," in Christopher Beattie and Stewart Crysdale

(eds.) Sociology Canada: Readings (Toronto: Butterworth and Co. Ltd., 1977); and James Weinstein, The Corporate Ideal in the Liberal State: 1900-1918 (Boston: Beacon Press, 1968).

12. Presthus, op. cit., p. 20.

13. R. Presthus, Elites in the Policy Process (London: Cambridge University Press, 1974), p. 5.

14. H.V. Nelles, The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941 (Toronto: Macmillan of Canada, 1974), pp. 491-492.

15. See also Wallace Clement, The Canadian Corporate Elite: An Analysis of Economic Power (Toronto: McClelland and Stewart Limited, 1975); and various articles in Leo Panitch (ed.) The Canadian State: Political Economy and Political Power (Toronto: University of Toronto Press, 1977).

16. Another important statement on the role of the state that deserves mention is Herschel Hardin, A Nation Unaware: The Canadian Economic Culture (Vancouver, B.C.: J.J. Douglas Ltd., 1974). Hardin argues that the Canadian economic culture is unique, "Monopoly suits us, and always has. We have an aptitude for monopoly..." (p 174).

17. Douglas Hartle, Public Policy Decision Making and Regulation (Montreal: The Institute for Research on Public Policy, 1979), p. 89.

18. See Douglas G. Hartle, Michael J. Trebilcock, J. Robert S. Prichard, and Donald N. Dewees, The Choice of Governing Instrument (Ottawa: Economic Council of Canada, Regulation Reference Research Study, forthcoming).

19. The symbolic value of regulation has not been lost on the Ontario government. The Ontario Cabinet recently issued an order limiting INCO emissions for 1983 to 1,950 tons of sulphur dioxide a day. The Globe and Mail carried the story on page one with the headline, "Ontario Cabinet orders INCO to cut stack emissions." The Environment Minister was quoted as saying, "The purpose of the regulation is to remove any question of our authority.... My ultimate goal is to achieve the lowest possible emission level in the shortest possible time; that has never been negotiable." Unless one reads the story carefully one gets the impression that the government has decided to get tough with INCO. The following day the Globe and Mail carried a follow-up story on page five and a column by Hugh Winsor both of which suggested that the Cabinet Order was a public relations ploy.

20. W.T. Stanbury and Fred Thompson, "The Scope and Coverage of Regulation in Canada and the United States: Implications for the Demand for Reform," in W.T. Stanbury (ed.) Government Regulation: Scope, Growth, Process (Montreal: The Institute for Research on Public Policy, 1980), pp. 33-34.

21. Ibid., p. 38.

22. Margot Priest, W.T. Stanbury and Fred Thompson, "On the Definition of Economic Regulation," in Government Regulation..., op. cit., p. 5.

23. Economic Council of Canada, Responsible Regulation: An Interim Report by the Economic Council of Canada (Ottawa: Minister of Supply and Services Canada, 1979), pp. 44-45.

24. See, for example, Paul Weaver, "Regulation, Social Policy and Class Conflict," The Public Interest, No. 50, Winter 1978.

25. In addition to the sources cited elsewhere in this chapter, see W.T. Stanbury, "Notes on Some Theories of Government Regulation" (Ottawa: Economic Council of Canada, Regulation Reference, unpublished paper, 1980); and Robert D. Cairns, Rationales for Regulation (Ottawa: Economic Council of Canada, Regulation Reference Technical Report, 1980).

26. The term "the public interest" is difficult to avoid and almost impossible to define. For proof of the latter point see the collection of definitions compiled by W.T. Stanbury, "Definitions of the 'Public Interest'," Appendix D in Hartle, op. cit., pp. 213-216.

27. Canada, House of Commons Debates, 1884, p. 1136.

28. J.A. Corry, "The Genesis and Nature of Boards," in John Willis (ed.) Canadian Boards at Work (Toronto: Macmillan of Canada, 1941), pp. xxxii and xxxiv. Corry was by no means an unquestioning advocate of regulation. Elsewhere he commented:

> America has tried administrative discretion in the hands of an independent commission. The flexibility hoped for by this device has not been achieved.... In the electric power field, regulation has failed to protect the public. Little is known about the effect of regulation in Canada but it is interesting to note that in Nova Scotia which is reported to have the most active Public Utilities Commission, the private power companies have most discouraging balance sheets. We do not know whether this is cause and effect or not but, in the United States, it is doubtful whether regulation has not cost the public more than it has saved them, while its occasional effectiveness and its constant uncertainties have had very serious effects upon the efficiency of private enterprise.

J.A. Corry, "The Fusion of Government and Business," Canadian Journal of Economics and Political Science, Vol. 2, No. 3, August 1936, p. 306.

29. See Charles F. Philips Jr., *The Economics of Regulation*, Rev'd ed. (Homewood, Illinois: Richard D. Irwin, Inc., 1969), Chapter Three. See also Jonathan R.T. Hughes, *The Governmental Habit* (New York: Basic Books, 1977), pp. 108 ff.

30. *Ibid.*, p. 67. In a dissenting opinion, Justice Holmes was arguing that a New York state law regulating the brokerage mark-up on theatre tickets should be upheld.

31. Both of these terms need to be used with care. Not all monopolies are natural monopolies. The distinguishing characteristic is that natural monopolies exhibit "decreasing unit costs over the entire extent of the market." Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions*, Vol. II (New York: John Wiley & Sons, Inc., 1971), p. 119. This means that it is more efficient for one firm to serve the entire market. Hydro-electric generating stations are often considered to be natural monopolies.

Destructive competition occurs in industries in which entry is easy and exit is slow (leading to persistent excess capacity) and fixed costs represent a large proportion of total costs. As a result, prices tend to be driven down towards marginal costs which are less than average costs in the short-run and many of the firms lose money for extended periods of time (Kahn, *op. cit.*, p. 173). Trucking is sometimes cited as an example of an industry that suffers from destructive competition.

32. This solution invariably benefits those firms fortunate enough to gain entry, but it does not insure that standards of service are maintained. From the point of view of the public interest, the cure is worse than the ailment.

33. For a trenchant critique of these rationales see Richard A. Posner, "Theories of Economic Regulation," *The Bell Journal*

of Economics and Management Science, Vol. 5, No. 2, Autumn 1974.

34. Richard A. Posner, "Taxation by Regulation," Bell Journal of Economics and Management Science, Vol. 2, No. 1, Autumn 1971. Some people would argue that this use of regulation to redistribute wealth should more properly be explained in terms of a private interest rationale. See footnote 43 below.

35. An allocative efficiency rationale can be used to explain why the ingredients are listed on cereal boxes, but it would be stretching the argument to use the rationale to explain why they are given in both official languages. This can be explained more profitably as a case of using regulation to achieve a social goal.

36. Gabriel Kolko, The Triumph of Conservatism (Chicago: Quadrangle Books, 1967, first published in 1963), pp. 98-107.

37. Gabriel Kolko, Railroads and Regulation, 1877-1916 (New York: W.W. Norton & Company Inc., 1970, first published in 1965), p. 3.

38. Wallace Clement, "An Exercise in Legitimization: Ownership and Control in the Report of the Royal Commission on Corporate Concentration," in P.K. Gorecki and W.T. Stanbury (eds.) Perspectives on the Royal Commission on Corporate Concentration (Montreal: The Institute for Research on Public Policy, 1979), p. 227.

39. Unfortunately, most economists seem to be unaware of Kolko's numerous critics. A collection of critical comments on The Triumph of Conservatism can be found in Otis L. Graham Jr. (ed.) From Roosevelt to Roosevelt: American Politics and Diplomacy, 1901-1914 (New York: Meredith Corporation,

1971). Kolko's argument concerning the origins of the Interstate Commerce Commission has been criticized by many people, including Edward A. Purcell Jr., "Ideas and Interests: Businessmen and the Interstate Commerce Act," *Journal of American History*, Vol. 54, No. 3, December 1967, pp. 561-578.

40. George Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1, Spring 1971, p. 3.

41. George Stigler, *The Citizen and the State* (Chicago and London: The University of Chicago Press, 1975), pp. x-xi.

42. Stigler, "The Theory of Economic Regulation," *op. cit.*, p. 4.

43. See Sam Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics*, Vol. 19, No. 2, 1976. Peltzman extends Stigler's argument to point out that the benefits of regulation will not be limited to the members of the successful group. Because of the need to minimize opposition "political entrepreneurship will produce a coalition which admits members of the losing group into the charmed circle" (p. 222). Peltzman explains "taxation by regulation" in much the same way. According to Peltzman, the existence of cross-subsidization in utility pricing has nothing to do with considerations of equity. Rather, it is the result of the rational regulatory seeking "a structure of costs and benefits that maximizes political returns" (p. 231).

44. W.T. Easterbrook, "Uncertainty and Economic Change," *Journal of Economic History*, Vol. 14, No. 4, 1954, p. 349.

45. Bruce Owen and Ronald Braeutigam, The Regulation Game: Strategic Use of the Administrative Process (Cambridge, Mass.: Ballinger, 1978), p. 26.

46. Anyone who wonders why there is public support for marketing boards should read David Folster, "Gambling for Potatoes," Maclean's, October 6, 1980, pp. 8-12. Folster's article on the plight of potato farmers in New Brunswick presents a prima facie case for a potato marketing board. The New Brunswick Potato Agency attempts to regulate marketing but it has met with only "'marginal' success - price cutting among growers remains a problem...." Price cutting is only one of the problems farmers face, another is excess supply, "if good prices are sustained through the winter, there's a risk farmers will rush onto their fields next spring and plant more potatoes than ever." Folster does not mention any of the criticisms that are usually levelled against marketing boards. He concludes the article by quoting a local resident, "I don't want anybody to get rich. But it'd be nice if they made enough to keep going."

47. C. Armstrong and H.V. Nelles, "Private Property in Peril: Ontario Businessmen and the Federal System, 1898-1911," in G. Porter and R. Cuff (eds.) Enterprise and National Development (Toronto: Hakkert, 1973), p. 21.

48. See Philips, op. cit., pp. 65-75. The following excerpt from a letter written in 1910 by Justice Oliver Wendell Holmes of the Supreme Court illustrates why many American businessmen looked upon the courts with favour:

> Of course I enforce whatever constitutional laws Congress or somebody else sees fit to pass - and I do it in good faith to the best of my ability - but I don't disguise my belief that the Sherman [Anti-trust] Act is a humbug based on economic ignorance and incompetence and my disbelief that the Interstate Commerce Commission is a fit body to be

> entrusted with rate-making, even in the qualified way in which it is entrusted. The Commission is naturally always trying to extend its power and I have written some decisions limiting it (by construction of statutes only).

Quoted by Marver H. Bernstein, Regulating Business By Independent Commission (Princeton: Princeton University Press, 1955), pp. 39-40.

49. This relative lack of access to the courts does not always work to the disadvantage of Canadian busines interests. In recent years American consumer advocates and environmentalists have won some important victories in the courts. Our legal system tends to provide business with more protection from such things as class-action suits.

50. University of Toronto, Walker Papers, Box 31, Walker to Lord Grey, January 30, 1911.

51. The important judicial decisions are too numerous to list. Several are mentioned in later chapters. See also Peter H. Russell (ed.) Leading Constitutional Decisions Rev'd ed. (Toronto: Macmillan of Canada, 1978).

52. See H.N. Janisch, "Policy Making in Regulation: Towards a New Definition of the Status of Independent Regulatory Agencies in Canada," Osgoode Hall Law Journal, Vol. 17, No. 1, April 1979, pp. 46-106.

53. See Chapter Six for more details.

54. James Q. Wilson points out:

> This is particularly true of senators, who not only must appeal to larger, harder-to-reach constituencies but who, unlike representatives, can take advantage of televised hearings. Senators Ribicoff and Warren G.

> Magnuson [who previously had been considered a pro-business Senator], for example, deliberately sought out auto safety as an issue with which they could make their mark, as Senator Kefauver before them had done, first with organized crime and then with prescription drugs.

James Q. Wilson, "The Politics of Regulation," in James W. McKie (ed.) Social Responsibility and the Business Predicament: Studies in the Regulation of Economic Activity (Washington, D.C.: The Brookings Institute, 1974), pp. 145-146. See also Mark V. Nadel, The Politics of Consumer Protection (Indianapolis and New York: The Bobbs-Merrill Company, Inc., 1971), Chapter Four.

55. The Conservative government of R.B. Bennett met with limited success when it tried to use the "Bennett New Deal" to get re-elected in 1935. See Chapter Five.

56. This is still true of members of the Senate. See Colin Campbell, The Canadian Senate: A Lobby From Within (Toronto: Macmillan of Canada, 1978).

57. The Beauharnois scandal which surfaced in the early 1930s involved huge campaign donations to the federal Liberal party. See H.B. Neatby, William Lyon Mackenzie King: The Lonely Heights, 1924-1932 (Toronto: University of Toronto Press, 1963), pp. 369-385. At about the same time it was discovered that the Premier of Ontario, George Henry and a member of the Ontario Hydro-Electric Power Commission, the former Prime Minister, Arthur Meighen, held bonds in a bankrupt power company which had been purchased by the Power Commission. See Nelles, op. cit., pp. 469-473. A few years earlier there had been a major scandal in Ontario involving the letting of timber contracts. See Peter Oliver, "G. Howard Ferguson; The Timber Scandal and the Leadership of the Ontario Conservative Party," in Peter Oliver (ed.)

Public & Private Persons: The Ontario Political Culture, 1914-1934 (Toronto and Vancouver: Clarke, Irwin & Company Limited, 1975).

58. Industrial Canada Vol. 10, No. 6, January 1910, p. 581.

59. See, for example, B.J. Young, "C. George McCullagh and the Leadership League," in R. Cook (ed.) Politics of Discontent (Toronto: University of Toronto Press, 1967).

60. University of Toronto, Walker Papers, Box 31, Walker to G. F. Hamilton, July 29, 1910.

61. See Michael Bliss, A Living Profit: Studies in the Social History of Canadian Business, 1883-1911 (Toronto: McClelland and Stewart, 1974), Chapter Six; R. Wiebe, Businessmen and Reform: A Study of the Progressive Movement (Chicago: Quadrangle Books, 1968, first published in 1962), Chapter Eight; and E.C. Kirkland, Dream and Thought in the Business Community, 1860-1900 (Ithaca: Cornell University Press, 1956), p. 128.

62. Industrial Canada, Vol. 10, No. 7, February 1910, pp. 676-77.

63. Ibid., Vol. 10, No. 7, February 1910, p. 678.

64. Ibid., Vol. 20, No. 6, October 1919, p. 48.

65. For a discussion of psychic costs see, R. Lane, The Regulation of Businessmen: Social Conditions of Government Economic Control (Hamden Conn.: Archon Books, 1966, first published in 1954); and A. Rotstein and H. V. Nelles, "Canadian Business and the Eternal No." in A Rotstein (ed.) The Precarious Homestead (Toronto: New Press, 1973).

66. Bliss, A Living Profit, op. cit., Chapter Two.

67. The Royal Commission is discussed in Chapter Five.

68. Bliss, "'Dyspepsia of the Mind'," op. cit., p. 188.

69. Armstrong and Nelles, op. cit., p. 22.

Chapter 2

CANADA, 1890-1939: A SOCIO-ECONOMIC SURVEY

(1) An Overview

The emergence of the regulatory state should be viewed in the context of the economic, political and social environment. The purpose of this chapter is to sketch briefly the general contours of that environment. To anyone familiar with the period, this chapter will be of limited value; for those unfamiliar with the history, it is hoped that this chapter will serve as a useful reference for the rest of the study.

The period from 1890 to 1939 has usually been viewed as one which began and ended in depression with a war and almost thirty years of rapid economic growth sandwiched in between. The classic economic history of this period is W.A. Mackintosh's The Economic Background of Dominion-Provincial Relations[1] which he completed in 1939 for the Royal Commission on Dominion-Provincial Relations. According to Mackintosh, economic growth in the 1870s, 1880s an early 1890s (the years of the Great Depression) was disappointing as evidenced by the slow rate of population growth and emigration to the greener pastures of the United States. Then in the mid-1890s a combination of favourable circumstances - increased gold output in South Africa, rising prices, particularly for foodstuffs, low interest rates and falling transportation costs - touched off a period of expansion characterized by increased investment and the rapid growth of the West.[2] This period, which lasted until 1913, has usually been referred to as "the wheat boom" for as Mackintosh argues:

> The driving force behind the new period was wheat and the wheat-growing region. It gave an economic unity to the country not hitherto experienced and built up a degree of interdependence between its different regions which was in sharp contrast to the isolation of the separate economic regions which had united in 1867.[3]

The collapse of the wheat boom in 1913 was short-lived. The demands of the war soon took up the slack in the economy. Continued post-war expansion was interrupted only by a brief period of readjustment in the 1920s. The economy diversified, but the exploitation of resources, particularly those bound for export markets, continued to dominate the economy. (Mackintosh points out that wheat and wheat flour, newsprint and woodpulp, base metals and gold made up more than half of the value of exports in the last half of the decade.[4]) However, the nature of the growth created rigidities in the economy and when the depression arrived, Canada with its dependence on exports and export-based industries, was more seriously affected than most other countries.[5] By 1939 the Canadian economy had not yet fully recovered.

(2) 1890-1914: The Wheat Boom?

Mackintosh's picture of a prolonged depression followed by a wheat induced boom has been challenged on two fronts. O.J. Firestone and, more recently, G.W. Bertram have questioned the notion of a Great Depression. Firestone's reconstructed Gross National Product figures show that in the period from 1873 to 1896 the GNP increased 2.5 times from $710 million to $1,800 million, a rate faster than that of the population increase.[6] Bertram's figures indicate that from 1870 to 1890 manufacturing grew at a faster rate than it did from 1870 to 1957.[7] He has described the period from 1870 to 1900 as one "of substantial growth, increasing localization of industry and increasing specialization of firms."[8] Meanwhile, Chambers and Gordon have questioned the contribution of wheat to the growth of the 1901-1911 period. They conclude that not much more than five percent of the total increase in per capita income can be attributed to wheat.[9] Bertram has directly challenged this conclusion, suggesting that their work is both theoretically and empirically inadequate. He estimates that the contribution of the wheat boom to real per capita income was between 24 and 30 percent for both the 1901 to 1911 and the 1901 to 1921 periods.[10]

These disagreements are more than examples of the problems involved in attempting to draw strong conclusions about economic growth with less than adequate statistics. The question at issue is whether important structural changes occurred around the turn of the century that fundamentally altered the nature of the Canadian economy and, by extension, Canadian society. To anyone interested in regulation the question is an important one, for if such changes did take place, one has to ask how they were related to the new regulatory initiatives undertaken at about the same time? Certainly the attention paid by politicians to the wheat economy indicates that they thought it was making a crucial contribution to the economic growth.

It is clear that the popular impression at the time was that significant changes were taking place. The economy was expanding, immigrants were arriving in unprecedented numbers and the west was being rapidly settled. The prevailing mood was one of optimism. One of the best indications of this sense of optimism was the federal government's decision in 1903 to participate in the construction of a second transcontinental railway. Sir Wilfrid Laurier's defence of his governments policy is a good example of the prevailing mood:

> The flood of tide is upon us that leads on to fortune; if we let it pass it may never recur again. If we let it pass, the voyage of our national life, bright as it is to-day, will be bound in shallows. We cannot wait because time does not wait; we cannot wait because, in these days of wonderful development, time lost is doubly lost; we cannot wait because at the moment there is a transformation going on in the conditions of our national life which it would be folly to ignore and a crime to overlook;... We say to-day it is the duty of the Canadian parliament, it is the duty of all those who have a mandate from the people to attend to the needs and requirements of this fast growing country....[11]

The sense of optimism and urgency that pervades Laurier's speech may have contributed as much to the pre-war boom as the development of the wheat economy. Suddenly, people began to believe in Canada.

The other interesting feature of the speech is the belief that it was the duty of the government to assist in the development of the country. This of course was nothing new. In the nineteenth century there was scarcely a canal or a mile of railway track that had been built without the assistance of one or more of the levels of government.[12] Tariff policy was another important tool that the government used to assist in the development of the country. (As we shall see, regulation was a third.) It was in the 1850s that the tariff was first explicitly associated with Canada's transportation needs and this association survived well into the twentieth century. With the dramatic tariff increases following the Conservatives' return to power in 1878, the government went one step further in using fiscal policy to foster economic growth. Following the introduction of the National Policy the tariff was no longer used merely to raise money to finance railway contruction, it was now designed to protect Canadian industry and attract American industry.[13]

Thus it was not surprising that Laurier thought it was the duty of the Canadian government to assist in the construction of a second transcontinental railway. (It was soon assisting the construction of a third.) He was merely continuing a long Canadian tradition. Public policy in Canada has always been explicitly developmental, although it is arguable that this has been true of North America as a whole. A strong developmental thrust has also run through American public policy. In The Governmental Habit, Jonathan R.T. Hughes points out that between 1815 and 1860 about 68 percent of all canal investment in the United States came from public sources and that between 1861 and 1890 public aid for railroad construction amounted to about $350 million. In fact, Hughes' book leads one to the suggestion that the role of the state in American economic life has not been as different from the Canadian experience as some would suggest. However, he does make an observation that points to one significant difference. He points out that most of the public funding of railroad construction occurred before government regulation was introduced.[14] In 1903, at the same time Laurier was justifying public assistance to build a transcontinental railway, his government was preparing to create the Board of Railway Commissioners to regulate freight rates.[15] In Canada public regulation went hand in hand with public assistance. This is a situation that was not unique to the railroad industry.

Presumably, the country approved of the government's railway policy for in the following year the Liberal government went to the voters and was returned with an increased majority. The government's development policy was expensive; between 1896 and 1913 current expenditures increased fourfold with developmental projects accounting for over half the increase. Almost all the federal debt incurred during this period was for railways, canals, harbours and river improvements.[16]

Perhaps the most obvious indication of the success of the government's developmental policy was the arrival of hundreds of thousands of immigrants. Between 1900 and 1914 the population increased by about 2.6 million from 5.3 to 7.9 million, an increase greater than that of the preceding thirty years. In a society that knew nothing of the measurement of gross national product, the importance of such a visible indication of growth cannot be overestimated. There were other obvious indications: between 1900 and 1914 the number of miles of rail lines more than doubled;[17] and the production of wheat increased almost fourfold from 59.9 million to 231.7 million bushels.[18] The growth rate of Canadian cities between 1901 and 1921 was equally impressive: Montreal almost doubled in size; Toronto more than doubled; Winnipeg's population increased fourfold; and Vancouver's increased fivefold.[19] By 1921 more than half of Canada's population lived in urban areas.[20] After a slow rate of growth in the 1890's the gross value of manufacturing doubled from 1900 to 1910 and then more than tripled during the following decade.[21] During the second decade, manufacturing's contribution to the GNP exceeded that of agriculture for the first time.[22]

Not all of the changes that occurred can be measured in simple terms of growth. Manufacturing output increased, but the rate of growth was not uniform across Canada. Much of the new development took place in Ontario and Quebec and often it was a matter of existing firms becoming larger. Small companies, frequently family owned, gave way to larger joint stock companies. Promoters like Max Aitken, who later became Lord Beaverbrook, emerged who knew more about raising capital and arranging mergers than they did about manufacturing. Aitken was active in the consolidation movement that lasted from 1909 to 1913. In those five years, as a result of a series of mergers, 221 enterprises were reduced to 97 with gross assets of more than $200 million.[23]

There was a certain amount of hostility to this wave of mergers, but it was not met with the distrust and hostility that confronted American big business. The latter part of the nineteenth century and the first few years of this century have usually been referred to as "the Progressive Era." Most American historians have interpreted the progressive movement as a reform-oriented reaction to the rapid socio-economic changes that had taken place since the 1870s. Beyond that there is little agreement. Older interpretations tended to concentrate on the "trust-busting" of Presidents Roosevelt and Taft. More cautious historians have identified certain themes: "government regulation of economic power, the application of scientific ideas to social problems, a concern for the quality and preservation of the environment, and reform of political institutions to make government more effective."[24] Another historian has characterized the period as "an age of organization."[25] More controversially, Gabriel Kolko has interpreted progressivism, not as an impulse towards reform, but as "the triumph of conservatism."[26]

One thing on which most historians would agree is that the Progressive era produced a new, expanded role for governments at all levels. If it is an exaggeration to claim that modern government regulation was born in the Progressive era, it is certainly true that during this period it emerged from its infancy.[27] It is possible to suggest three reasons for the rapid growth of regulation: a distrust of big business and of business practices generally; a lack of faith in politicians and in traditional political institutions;[28] and the emergence of "a new class" of middle-class professionals skilled in the social sciences. The distrust of business practices produced a demand for government regulation but there was a feeling that politicians were either unable or unwilling to act as regulators. The middle-class professionals were there to help identify the problem areas and urge reform and then they graciously offered to staff the specialized agencies and commissions that were created to regulate business. In the process the notion arose that regulation was scientific, i.e., impartial, and that it had been taken out of politics. This was never more than an ideal, but it is the ideal that lies at the heart of modern regulation.[29]

In Canada the progressive impulse was much weaker. The "robber baron" view of businessmen never took hold of the public's imagination in the way it did in the United States. Nor did the muckracking journalism that sustained this view and produced such books as Upton Sinclair's The Jungle[30] ever become as widespread in Canada. "Trust-busting" never became as much a part of our political rhetoric as it did in the United States. In 1910, at the height of the consolidation movement, the Combines Investigation Act[31] was passed but it was much weaker than similar American legislation. It was weaker because Canadian politicians and probably most Canadians, had a different attitude towards big business than their American neighbours. The essence of this attitude can be inferred from the following statements made by Mackenzie King during the debate on the legislation:

> The legislation is in no way aimed against trusts, combinations and mergers as such, but rather only at the possible wrongful use or abuse of their power, of which certain of these combinations may be guilty. [My emphasis.]
>
> The great mistake which was made by the Sherman Anti-Trust Act, and a mistake which has been made I think in discussions on the subject even in this House, has been that the measure was aimed against trade combinations as such.[32]

Still, the progressive impulse was present in Canada and it did contribute to the introduction of an impressive amount of government regulation. It also manifested itself in a number of other ways: a desire to "purify" politics by minimizing patronage and corruption; an attempt to improve living conditions in the rapidly-growing cities by introducing public health measures; the naive belief that society could be improved by the introduction of prohibition; and an inclination by interest groups to organize. Cities formed the Union of Canadian Municipalities, businessmen organized the Canadian Home Manufacturers' Association, Franco-Ontarians established the Association Canadienne-Française d'Éducation d'Ontario and of course workers and farmers organized.

Although unions had existed in Canada for many years by 1900 only 20,000 workers were unionized. Fourteen years later, there were about 100,000 union members, thanks in part to the influence of Samuel Gompers' American Federation of Labour.[33] This period also saw the creation of a separate federal Department of Labour in 1909 under the control of the labour expert (and Harvard Ph.D.) William Lyon Mackenzie King. Two years earlier, while still a Deputy Minister, King had been largely responsible for the passage of the Industrial Disputes Investigation Act.[34] Despite their impressive increase in numbers and the government's acknowledgement of the importance of labour, trade unionists did not have very much influence in the shaping of public policy. The same could not be said about farmers' organizations.

Organizations such as the Grange and the Patrons of Industry, which were established in the 1880s and 1890s, were on the wane by 1900. Beginning early in this century new, more stable organizations apeared to take their place. In 1902 the Farmers' Association of Ontario was formed and the Territorial Grain Growers' Association and the Manitoba Grain Growers' Association soon followed. Then in 1909 the Canadian Council of Agriculture was formed. Better organized than factory workers, it was the farmers and their leaders who were the most persistent critics of public policy:

> Our national policy has deliberately and persistently fostered urban industries at the expense of rural. Our cities have grown with feverish haste, not because their growth provided advantages for the average city resident, but because it gave opportunity to the Big Industries and big landowners to exploit the labour of a large number of workers and to gather into their own pockets the "unearned increment".[35]

The farmers' major grievance was the protective tariff, the one issue most immune to their attacks.

(3) The Impact of World War I

The grievances of labour and farmers were intensified by the experience of World War I. Like other Canadians they were angered by rumours of huge profits being made by manufacturers and food processors while they were being asked to make sacrifices. This produced the demand that conscription of wealth should accompany the conscription of men. Workers felt that their wages were not keeping up with the cost of living which increased sharply after 1915.[36] In part they responded by joining unions, doubling the membership which reached more than one-third of a million in 1919. They also responded by showing increased interest in more radical alternatives such as the Industrial Workers of the World ("Wobblies"), the Social Democratic Party and the One Big Union.

Farmers were generally more supportive of the government's war effort until it retracted its promise to exempt farmers' sons from conscription. Some 5,000 of them expressed their disapproval by going to Ottawa to protest the decision. Underlying the farmers specific grievances was a concern, particularly strong in Ontario, that rural depopulation was undermining rural life and contributing to a breakdown of traditional values.[37] There was a strong element of righteousness in the farmers movement. When the Canadian Council of Agriculture presented its Farmers Platform in 1917 it called for the abolition of patronage, prohibition, the vote for women, the nationalization of all railway, telegraph and express companies and political reform through the introduction of initiative, referendum and recall.[38] Although the farmers movement did have a progressive strain in it, it was ultimately based on the assumption that they, more than any other group, knew what was best for Canadian society.

By the end of the war Canada was deeply divided: angered by conscription and the dispute over bilingual schools in Ontario, French Canadians felt isolated from the rest of Canada; stronger and more militant than ever, organized labour increasingly talked about confrontation; and angered by the failure of their march on Ottawa, farmers began to discuss political action. Some Canadians expressed concern over the tendency of interest groups to combine. J.W. Flavelle, the prominent Toronto businessman, warned:

> There is a grave danger to the State when sections of the community organize almost

> wholly for their own benefit, and, with increasing power, undertake to dictate to the community and to frighten politicians, that the thing which they consider best must be given, or they will exercise the power of their organizations to bring such discomfort to the community and politicians that they will secure what they demand.[39]

Others acted more pragmatically; the Canadian Manufacturers' Association organized the Canadian Reconstruction Association to present its views on the direction that post-war society should take.

There were as many prescriptions designed to heal Canada's wounds as there were self-professed physicians. One such prescription urged Canadians to apply the sense of duty and sacrifice they had shown during the "Great War" to solving the country's post-war problems. Another suggested that the remedy lay in a "new Christianity." Others urged a return to individual initiative.[40] Almost everyone urged reform but few agreed on the form it should take. Although reform was certainly in the air in 1919, surprising little came of it. Undoubtedly some people were frightened by the Winnipeg General Strike.[41] It started out as a dispute over wages and collective bargaining and escalated into a month long general strike; finally, it was transformed by almost every newspaper in the country into an attempt by foreign-born Bolsheviks to take over the city of Winnipeg. Others may have been disillusioned by the limited success of those reforms that were achieved, the vote for women and prohibition. Prohibition did not cure any of the social ills that some had predicted and, judging by the number of prescriptions doctors began to issue, it caused a large number of new medical problems. Nor did the enfranchisement of women have the purifying effects on politics that some people had hoped would result. Women demonstrated a remarkable tendency to vote much the same as men had always voted.

Admittedly, there were some electoral surprises although it is doubtful if these could be attributed directly to the new female voters. A few labour candidates such as J.S. Woodsworth (who was to become the first leader of the CCF in 1933) began to meet with electoral success while farmers' governments were elected in Ontario in 1919 and in Alberta in the following year. In the 1921 election, 65 Progressives were returned giving them more seats than the Conservatives.

The war exacerbated existing social tensions. It also expanded the role of the government in the economy and greatly increased government spending.[42] The federal government introduced a business profits tax and an income tax to finance the war effort. In addition, the government had to intervene because of the breakdown in international trade, the rapid rate of inflation and shortages of essential raw materials. The three years from 1917 to 1919 witnessed the creation of a number of agencies in an attempt to cope with these problems. A Food Controller, a Fuel Controller, a Paper Controller, a War Trade Board, a Food Board, an Acting Commissioner re Cost of Living, a Wheat Board and a Board of Commerce regulated everything from the profits of coal dealers, to the export price of wheat, to the amount and price of newsprint that Canadian manufacturers had to sell to domestic newpapers.[43] Although the wartime economy was extensively regulated, it has been suggested that it was controlled less than that of any other major belligerent.[44] In the United States, for example, President Wilson took over the control of all the railways. The experience with extensive regulation was short-lived; by 1920 none of agencies mentioned above were operating. The economy had been deregulated; only the income tax and the legacy of the wheat board remained.

(4) The 1920s: The Resurgence of Regionalism

The war-induced inflation lasted until about 1920 and was followed by a period of readjustment which lasted for about two years. The fall in prices that occurred was particularly hard on the farm community.[45] There was also a brief period of unemployment. Secondary industry recovered fairly quickly, but the wheat economy and the Nova Scotia coal industry took longer to get back on their feet and it was not until the middle of the 1920s that the prairie and maritime economies were fully recovered. Growth was stronger in the second half of the decade; in the 1919-1926 period the average annual rate of growth in manufacturing was 4.0 percent while in the next three years it was 9.3 percent.[46] Large establishments became even larger; between 1923 and 1929 almost 46 percent of the total increase in manufacturing employees occurred in firms already employing over 500 workers.[47] One of the industries contributing to this trend was the automobile industry which rose from eighth to fourth place in terms of gross value of production.[48] There was a regional pattern to the growth in manufacturing during the decade. The Maritime's share of the country's manufacturing output declined from 7 to 4.5 percent.[49]

Economic growth in the 1920s was also characterized by the growing importance of "new" staples - hydro-electric power, pulp and paper, and minerals. The amount of developed water power more than doubled during the decade, newsprint capacity more than tripled and the value of non-ferrous metals almost doubled. The increase in the amount of acreage devoted to wheat production was only about 25 percent.[50] It is significant that the growth in the new staples took place largely in Ontario, Quebec and British Columbia where natural resources were under the control of the provincial governments. On the other hand, the wheat economy was centred on the prairies where the Dominion government retained control of the resources until 1930.[51] The growing importance of these staples together with the increasing use of the automobile and the truck increased the obligations and the revenues of the provincial governments and generally raised their status. As a result the jurisdictional disputes of the 1920s and 1930s between Ontario and Quebec and the federal government over the regulation of insurance and control of water power sites on the Ottawa and St. Lawrence Rivers were more contests between equals.

The federal government's total budgetary expenditures remained relatively stable during the decade; they declined in the early 1920s and then increased by about 15 percent thereafter.[52] On a per capita basis they actually declined while the total per capita debts and expenditures of municipalities and the provinces rose by over 20 and 70 per cent respectively.[53]

While in terms of the expansion of government activities it may be true that, "No obvious and pressing challenge to action presented itself in the federal sphere...",[54] the government in Ottawa was faced with pressing challenges in the form of regional protest movements. The 65 Progressives elected in 1921 out of a total of 235 seats in the House of Commons gave the western farmers an impressive amount of political influence. Mackenzie King, the new Prime Minister, spent much of his first term in office attempting to co-opt the Progressives whom he saw as misled Liberals. While the Progressive movement was slowly waning as a result of King's attention, the Maritime Rights movement was quickly waxing as a result of his neglect. The absorption of the Intercolonial into the Canadian National Railways, the failure of the region to participate fully in the economic prosperity of the early 1920s and a general feeling of powerlessness brought the Maritimers' long-standing regional grievances out into the open. In 1925 Maritimers decisively rejected the Liberals returning only six members as opposed to the 25 they had returned in 1921.[55] In both cases regional discontent was met by a reduction in freight rates: in the west the Crow's Nest Pass Agreement of 1897 was reinstated; in the east the Maritimes Freight Rates Act[56] of 1927 reduced rates by 20 percent. In both cases, as will be discussed below, the Board of Railway Commissioners was by-passed.

Even before the stock market crash of 1929 there were indications the Canadian economy was in trouble. The main problem was one of overproduction. In 1928 farmers produced more than 500 million bushels of wheat, the largest crop prior to the 1950s.[57] Unfortunately this occurred at the same time that countries such as the Soviet Union were bringing new areas into production. A more serious problem existed in the newsprint industry which had expanded so rapidly in the 1920s. After 1927, prices began to fall and plants operated at less than capacity. Given their heavy fixed costs manufacturers could not cut back on production quite as easily as wheat farmers. It has been suggested that Canada was headed for a minor downturn when the depression struck and this made it all the more severe.[58]

(5) The 1930s: In Search of New Policies

Nineteen-thirty was a pivotal year; it is not just that it marked the end of about 30 years of almost uninterrupted growth, it also marked the culmination of the first phase of the national policy. The national policy was a broad developmental policy designed to stimulate economic growth and integrate the country by opening the West, encouraging immigration, protecting domestic manufacturing, exploiting natural resources and spanning the continent with rail-lines. By 1914 it was obvious that it had been a success. The election of 1911, which saw the defeat of the Liberal government's plan to alter the tariff, was a symbolic affirmation of the strength of the national policy. In fact, it may have been too great a success.[59] In some quarters there were rumblings of discontent about the number of immigrants and it became obvious the country had more transcontinental railways than it could economically support. Although new problems emerged after the war, the marketing of wheat is one example, government policy remained the same except to the extent that the developmental impetus shifted to the provinces. This was finally acknowledged in 1930 by the transfer of the natural resources from the Dominion to the individual prairie provinces.

The transfer of jurisdiction over natural resources coincided with the collapse of the western grain economy. The average farm price for the 1929 wheat crop was over $1 a bushel, a year later it was under 40 cents.[60] The Central Selling Agency advanced the farmers more per bushel than was later realized in sales and the federal government had to move in to guarantee the agency.[61] The conjuncture of the agricultural crisis with an industrial crisis increased the impact of the Depression. The decline in economic activity from 1929 to 1933 was greater than that of any other country with the exception of the United States.[62] One reason why Canada was so vulnerable was because of its dependence on international trade and the collapse of world trade was one of the most serious consequences of the depression. Not only was the decline to 1933 greater than in most other countries, the recovery after 1933 was slower. With the exception of isolated sectors such as the mining industry, the economy had not yet recovered by 1939 when World War II broke out.

The human dimension of the depression was even more alarming. In 1933 as many as 25 percent of the work force were unemployed and 1.5 million people depended on direct relief.[63] Thousands of people drifted back and forth across the country in search of non-existent work. As the number of transients increased the government responded by deporting 25,000 people between 1930 and 1934.[64]

For the first time since the end of the war people began to think seriously about social issues. Obviously, much of this thought was directed towards figuring out what had gone wrong and suggesting solutions that would ease the effects of the depression. The League for Social Reconstruction was founded in 1931-32 by a group composed largely of eastern academics to look at these kinds of problems. In its book Social Planning for Canada published in 1935, the league argued that, "Competition has destroyed itself, planning is necessary. The choice before us is between anarchic planning for private profits, or unified and comprehensive planning for the common good."[65]

The League for Social Reconstruction played an active role in the creation of the Co-operative Commonwealth Federation in 1933. The C.C.F. was committed to, "The establishment of a planned, socialized economic order, in order to make possible the most efficient development of the national resources and the most equitable distribution of the national income."[66] A planned economy was the solution offered by the League for Social Reconstruction and the C.C.F., but it was a solution that did not hold a great deal of attraction for the voters.

Far more attractive was the solution offered by the Social Credit Party. It was almost solely the creation of William Aberhart, an Alberta high-school principal and part-time fundamentalist preacher. The prairies was a debtor region and when in debt, North American farmers have always had a fascination with monetary policy. Usually the fascination has centred on various schemes to encourage inflation which reduces the real impact of indebtedness. Aberhart's particular inflationary scheme was derived from Major Douglas' theories of Social Credit. He preached the Social Credit message every Sunday to thousands of receptive radio-listeners until he had enough converts to sweep the United Farmers of Alberta from office in the provincial election of 1935. In the federal election of the same year, Social Credit candidates won 15 of 17 seats in Alberta and two in Saskatchewan.[67]

The federal government's response to the Depression was cautious. One of the first acts of the newly elected government of R.B. Bennett was to raise tariffs to unprecedented levels.[68] This was accompanied by an equally traditional commitment to a balanced budget, a commitment only reluctantly abandoned by the King government in 1938. Government monetary policy was "conspicuous by its virtual absence."[69] Bennett's

New Deal legislation of 1935 was a significant innovation but it was more significant for constitutional reasons than for social reasons.[70]

The constitution took on a new importance in the 1930s. Federal legislation was overturned because it intruded into the provincial domain while provincial legislation was overturned for the opposite reason.[71] The fiction that the provinces and municipalities were responsible for relief was maintained only by the extensive use of federal grants-in-aid. Eventually, the Federal government assumed about 40 percent of the amount spent on relief from 1930-37.[72] Even this left the provinces in a very precarious financial position. Several of the provinces were on the edge of bankruptcy for most of the decade.

The Depression quickly demonstrated the poverty of traditional Canadian public policy. Up until 1930 a growing economy had obscured most of the inadequacies but in the next few years they quickly became apparent. The problems of the 1930s - overproduction, falling prices, unused capacity, massive unemployment, widespread mortgage defaulting were not the kinds of problems that could be solved by continued reliance on a national policy committed to private sector growth and rather limited intervention by federal and provincial governments. Throughout the 1930s the governments of R.B. Bennett and Mackenzie King slowly and half-heartedly groped for a new set of policies (with the exception of Bennett's sudden conversion near the end of his term in office). At the end of the 1930s the country was still struggling with the Depression, but there were indications in the creation of a central bank in 1934, the beginnings of a government role in the marketing of natural products, and the appointment of the Royal Commission on Dominion-Provincial Relations that new approaches were emerging.

NOTES

1. W.A. Mackintosh, The Economic Background of Dominion-Provincial Relations, J.H. Dales (ed.) Appendix III of the Royal Commission Report on Dominion-Provincial Relations, (Toronto: McClelland and Steward Limited, 1964, first published, 1939).

2. Ibid., pp. 35-39.

3. Ibid., p. 39.

4. Ibid., p. 79.

5. Ibid., pp. 104-106, 114-115.

6. Quoted by P.B. Waite, Canada, 1874-1896: Arduous Destiny (Toronto: McClelland and Stewart, 1971), p. 74.

7. G.W. Bertram, "Economic Growth in Canadian Industry, 1870-1915: The Staple Model," in W.T. Easterbrook and M. Watkins (eds.) Approaches to Canadian Economic History (Toronto: McClelland and Stewart, 1967), p. 82.

8. Ibid., p. 78.

9. E.J. Chambers and D.F. Gordon, "Primary Products and Economic Growth: An Empirical Measurement," The Journal of Political Economy, Vol. 74, Aug. 1966, p. 316. See also John Dales, John C. McManus and Melville H. Watkins, "Primary Products and Economic Growth: A Comment"; and E.J. Chambers and D.F. Gordon, "Primary Products and Economic Growth: A Rejoinder," The Journal of Political Economy, Vol. 75, No. 6, December 1967, pp. 876-885.

10. G.W. Bertram, "The Relevance of the Wheat Boom in Canadian Economic Growth," The Canadian Journal of Economics, No. 4, Nov. 1973, p. 563.

11. Canada, House of Commons Debates, 1903, pp. 7654-7660.

12. By 1900 federal, provincial and municipal governments had contributed over $200 million towards the construction of railways. This figure does not include the value of contributions of land. See M.C. Urquhart and K.A.H. Buckley, Historical Statistics of Canada (Toronto: Macmillan of Canada, 1965), p. 526.

13. The term "National Policy" is usually used to refer only to the protective tariff introduced by John A. Macdonald's government. The term "national policy" is used to refer to the collection of policies - the opening of the West, the encouragement of immigration, the protective tariff, the construction of transcontinental railways etc. - designed to turn Canada into an economic as well as a political entity.

14. Jonathan R.T. Hughes, The Governmental Habit (New York: Basic Books, 1977), pp. 71, 76 and 73.

15. In the same year the federal government passed The Railway Labour Disputes Act, 1903, 2 Edw. VII, c. 55, to deal with labour disputes in the railroad industry.

16. D.V. Smiley (ed.) The Rowell-Sirois Report: An Abridgement of Book I of the Royal Commission Report on Dominion Provincial Relations (Toronto: McClelland and Stewart Limited, 1963), p. 98. The Report was originally published in 1940.

17. Urquhart and Buckley, op. cit., pp. 528 and 532.

18. Ibid., p. 363. These figures actually refer to the preceding year's crop.

19. R.C. Brown and R. Cook, Canada 1896-1921: A Nation Transformed (Toronto: McClelland and Stewart, 1974), p. 98.

20. Urquhart and Buckley, op. cit., p. 14.

21. Urquhart and Buckley, op. cit., p. 463.

22. Ibid., p. 141.

23. J.C. Weldon, "Consolidations in Canadian Industry, 1900-1948," in L.A. Skeoch (ed.) Restrictive Trade Practices in Canada (Toronto and Montreal: McClelland and Stewart Limited, 1966), p. 233. Other sources suggest that the wave of consolidations was even more dramatic. Brown and Cook, op. cit., pp. 91-92 and Michael Bliss A Living Profit: Studies in the Social History of Canadian Business, 1893-1911 (Toronto: McClelland and Stewart, 1974) p. 40 give figures that indicate that between 1909 and 1912, 275 firms were reduced to 58 with an authorized capitalization of almost half a billion dollars. Weldon's figures are probably more reliable and the use of authorized capitalization as a means of gauging size is questionable.

24. Lewis L. Gould, "Introduction," in L. Gould (ed.) The Progressive Era (Syracuse: Syracuse University Press, 1974), p. 9.

25. Robert Wiebe, Businessmen and Reform: A Study of the Progressive Movement (Cambridge: Harvard University Press, 1962), pp. 16 ff.

26. Gabriel Kolko, The Triumph of Conservatism (Chicago: Quadrangle Books, 1967, first published in 1963).

27. The Interstate Commerce Commission (1887) and the Federal Trade Commission (1914) were created in this era. As well, the Food and Drug Administration (1931) had its origins in the Pure Food and Drug Act of 1906. The Sherman Anti-Trust Act (1890); the Elkins Act (1903); the Hepburn Act (1906) (the last two both dealt with the regulation of railroads); the Meat Inspection Act (1906); the Federal Reserve Act (1913); and the Clayton Act (1914) were other important regulatory acts passed in this period. For a list of comparable Canadian federal legislation see Chapter Four.

28. In the United States, progessivism produced a number of reforms designed to increase the voter's control over the political process. The use of primaries, the popular election of senators and experiments such as the referendum, recall and initiative were the results of the desire to purify politics. Government regulation was also part of this attempt to democratize society.

29. The desire to separate regulation from politics helps to explain the introduction of the regulatory commission:

> In the past, the commission form of regulation was supported on several grounds. Where regulation was undertaken as an exception to the general presumption of laissez-faire, there was a desire to make the area of regulation narrow and self-contained, separate from more general economic policy. There was perhaps an exaggerated faith in experts, a hope that the regulatory process could be "judicialized" and kept free from politics.

Merle Fainsod, Lincoln Gordon and Joseph C. Palamountain, Jr., Government and the American Economy, 3rd ed. (New York: W.W. Norton & Co., 1959) p. 59. While not absent from Canada, this desire to keep the regulatory process free from politics was not as strong here as in the United States.

30. Upton Sinclair, The Jungle (Toronto: McLeod and Allan Publishers, n.d.). It was published in the United States in 1906.

31. Statues of Canada, Combines Investigation Act, 1910, 9-10 Edw. VII, c. 9.

32. Canada, House of Commons Debates, 1910, pp. 6823 and 6832.

33. Brown and Cook, op. cit., pp. 109-110.

34. Statutes of Canada, The Industrial Disputes Investigation Act, 1907, 6-7 Edw. VII, c. 20. In some respects, King was a Canadian counterpart of the typical American Progressive. See Keith Cassidy, "Mackenzie King and American Progressivism," in John English and J.O. Stubbs (eds.) Mackenzie King: Widening the Debate (Toronto: Macmillan of Canada, 1977).

35. W.C. Good, one of the leaders of the farmers' movement in Ontario, quoted by Brown and Cook, op. cit., p. 157.

36. The cost-of-living index only rose from 79.5 to 81.4 between 1913 and 1915 (1935-39 = 100) and then it began to increase quickly - to 88.1 in 1916, 104.3 in 1917, 118.1 in 1918, 129.8 in 1919, and 150.4 in 1920. In 1921 it fell to 132.3. Urquhart and Buckley, op. cit., p. 304.

37. See W.R. Young, "Conscription, Rural Depopulation and the Farmers of Ontario, 1917-1919," in Canadian Historical Review, Vol. 53, 1972.

38. Louis A. Wood, A History of Farmers Movements in Canada (Toronto: University of Toronto Press, 1975, first published in 1924), pp. 345-346.

39. Quoted by Michael Bliss, A Canadian Millionaire: The Life and Business Times of Sir Joseph Flavelle, Bart. 1858-1939 (Toronto: Macmillan of Canada, 1978), p. 394.

40. See the collection of essays in J.O. Miller (ed.) The New Era in Canada (London: J.M. Dent, 1917). See also William Lyon Mackenzie King, Industry and Humanity (1918), recently republished with an introduction by David J. Bercuson (Toronto and Buffalo: University of Toronto Press, 1973); Salem Bland, The New Christianity: Or, the Religion of the New Age (1920), republished with an introduction by Richard Allen (Toronto and Buffalo: University of Toronto Press, 1973); and Stephen Leacock, The Unsolved Riddle of Social Justice (1920). It has been republished in Alan Bowker (ed.) The Social Criticism of Stephen Leacock (Toronto and Buffalo: University of Toronto Press, 1973).

41. The two standard works on the Strike are D.C. Masters, The Winnipeg General Strike (Toronto and Buffalo: University of Toronto Press, 1973, first published in 1953), and David J. Bercuson, Confrontation at Winnipeg: Labour Industrial Relations and the General Strike (Montreal: McGill-Queen's University Press, 1974).

42. Alan T. Peacock and Jack Wiseman have argued that public revenues and expenditures increase in discrete jumps as a result of disturbances such as major wars and economic depression. They have termed this the "displacement effect":

> When societies are not being subjected to unusual pressures, people's ideas about tolerable burdens of taxation, translated into ideas of reasonable tax rates, tend also to be fairly stable ... in settled times, notions about taxation are likely to be more influential than ideas about desirable increases in expenditure in deciding the size and rate of growth of the public sector. There may thus be a persistent divergence between ideas about desirable public spending

> and ideas about the limits of taxation. This divergence may be narrowed by large scale social disturbances, such as major wars. Such disturbances may create a displacement effect, shifting public revenues and expenditures to new levels. After the disturbance is over new ideas of tolerable tax levels emerge, and a new plateau of expenditure may be reached, with public expenditures again taking a broadly constant share of gross national product, although a different share from the former one.

Quoted by Richard M. Bird, The Growth of Government Spending in Canada (Toronto: Canadian Tax Foundation, 1970), pp. 108-109. Bird's figures for federal government spending indicate that a displacement effect did occur. In current dollars the increase in spending from 1913 to 1919 was fourfold. In constant dollars the increase was less than twofold. However, the high level of spending in 1919 declined so that by the mid-1920s expenditures (in constant dollars) were less than 50 percent higher than in 1912-13. Bird, op. cit., pp. 268-269.

43. See J.A. Corry, "The Growth of Government Activities in Canada, 1914-1920," in Canadian Historical Association Report, 1940; and Tom Traves, The State and Enterprise: Canadian Manufacturers and the Federal Government, 1917-1931 (Toronto and Buffalo: University of Toronto Press, 1979) pp. 29-54.

44. J.A. Corry, op. cit., p. 63.

45. The wholesale price of No. 1 Northern wheat fell from a high of $2.24 per bushel in 1918 to a low of $1.07 in 1923. The wholesale price of steers in Toronto fell from a high of 13.06 cents per pound in 1919 to a low of 6.75 cents in 1924 (current prices). Urquhart and Buckley, op. cit., p. 359.

46. Bertram, "Economic Growth in Canadian Industry,..." op. cit., p. 82.

47. Tom Traves, "Security and Enterprise: Canadian Manufacturers and the State, 1917-1931" (Ph.D. Thesis, York University, 1976), p.8. This figure is not in the published version of this thesis, see footnote 41.

48. A.E. Safarian, The Canadian Economy in the Great Depression (Toronto: University of Toronto Press, 1959), p. 32.

49. E.R. Forbes, The Maritime Rights Movement, 1919-1927: A Study in Canadian Regionalism (Montreal: McGill-Queen's University Press, 1979), p.63.

50. V.C. Fowke, "The National Policy - Old and New," in Approaches to Canadian Economic History, op. cit., pp. 249-250; and Urquhart and Buckley, op. cit., pp. 335 and 362.

51. The federal government surrendered control by a series of acts. Statutes of Canada, The Alberta Natural Resources Act, 1930, 20-21 Geo. V, c. 3; The Manitoba Natural Resources Act, 1930, 20-21 Geo. V, c. 29; The Railway Belt and Peace River Block Act, 1930, 20-21 Geo. V, c. 37; and The Saskatchewan Natural Resources Act, 1930, 20-21 Geo. V, c. 41.

52. Urquhart and Buckley, op. cit., p. 201. In constant dollars, total federal expenditures increased by 25 percent from 1920 to 1929. Bird, op. cit., pp. 268-269.

53. The Rowell-Sirois Report, op. cit., p. 141. As a percentage of total government expenditures, federal expenditures fell from 81.5 percent in 1920 to 65.4 percent in 1929. Bird, op. cit., pp. 268-269.

54. The Rowell-Sirois Report, op. cit., p. 139. The federal government undertook few new regulatory initiatives in the 1920s. In their study of the growth of regulatory activity

in Canada, Margot Priest and Aron Wohl have identified only six regulatory statutes passed in the 1920s. In contrast, 17 were passed in the preceeding decade and 15 in the following decade. Of these six, none could be considered an important statute. They included the Trenton Harbout Act (1922) and the Yukon Quartz Mining Act (1924). Their definition of a regulatory statute excludes the Maritime Freight Rates Act. Margot Priest and Aron Wohl, "The Growth of Federal and Provincial Regulation of Economic Activity, 1867- 1978," in W.T. Stanbury (ed.) Government Regulation: Scope, Growth, Process (Montreal: The Institute for Research on Public Policy, 1980).

55. For an excellent treatment of the Maritime Rights movement see Forbes, op. cit.

56. Statutes of Canada, Maritime Freight Rates Act, 1927, 17 Geo. V, c. 44.

57. V.C. Fowke, The National Policy and the Wheat Economy (Toronto: University of Toronto Press, 1973, first published in 1957), p. 75.

58. Safarian, op. cit., p. 43.

59. John H. Dales has been the most persistent critic of the national policy arguing that it has increased the size of the Canadian economy at the cost of a lower standard of living. See his Protective Tariff in Canadian Development (Toronto: University of Toronto Press, 1966).

60. C.F. Wilson, A Century of Canadian Grain (Saskatoon: Western Producer Prairie Books, 1978), p. 246.

61. The Central Selling Agency was set up in 1924 as an alternate means of marketing grain. It handled the grain that the farmers sent to the provincial pools. See Chapter Four for details.

62. Safarian, *op. cit.*, p. 3.

63. M. Horn (ed.) *The Dirty Thirties* (Toronto: The Copp Clark Publishing Company, 1972), pp. 10 and 12.

64. L.M. Grayson and M. Bliss (eds.) *The Wretched of Canada* (Toronto and Buffalo: University of Toronto Press, 1971), p. xiv.

65. League for Social Reconstruction Research Committee, *Social Planning for Canada* (Toronto: Thomas Nelson & Sons Limited, 1935), pp. 125-126.

66. Quoted by D. Owen Carrigan, *Canadian Party Platforms, 1967-1968* (Urbana: The University of Illinois Press, 1968), p. 122.

67. On the Social Credit see John Finlay, *Social Credit: The English Origins* (Montreal and London: McGill-Queen's University Press, 1972); C.B. Macpherson, *Democracy in Alberta* (Toronto: University of Toronto Press, 1953); and John A. Irving, *The Social Credit Movement in Alberta* (Toronto: University of Toronto Press, 1959).

68. See Orville John McDiarmid, *Commercial Policy in the Canadian Economy* (Cambridge, Mass.: Harvard University Press, 1946), pp. 272-289.

69. Safarian, *op. cit.*, p. 65.

70. H.B. Neatby, "The Liberal Way: Fiscal and Monetary Policy in the 1930's," in V. Hoar (ed.) The Great Depression (Toronto: Copp Clark Publishing Company, 1969), pp. 92-93.

71. Reference re Alberta Statutes, [1938] S.C.R. 100. Three Alberta statutes were overturned by this decision. Several federal statutes which were part of the "Bemnett New Deal" were overturned. See Chapther Five.

72. The Rowell-Sirois Report, op. cit., p. 176. In contrast to the 1920s, federal expenditures rose by about 75 percent during the decade. In constant dollars, they rose from $397 million in 1930 to $625 million in 1932. After 1932 expenditures declined then remained relatively constant until 1939 when they rose to $686 million. Throughout the decade federal expenditures ranged between 62 and 68.7 percent of total government expenditures. Bird, op. cit., pp. 268-269.

Chapter 3

THE REGULATION OF TRANSPORTATION

(1) Transportation in Canadian History

Ever since the arrival of the first fishing fleet in the sixteenth century transportation has played a crucial role in Canada's development. The very existence of Canada is a triumph of transportation over geography. Most obviously, it has provided the means to move the all important staples to export markets, but this is not the only imperative which has shaped its development. The emergence of new staples created the demand for new modes of transportation, other factors influenced when and where they were constructed. The Welland Canal and the canals on the St. Lawrence were built in the 1830s and 1840s even though it was cheaper to ship goods via the Erie Canal through the port of New York. The Canadian Pacific Railway was built in advance of demand to honour the bargain that brought British Columbia into Confederation and it was built across the wilderness of the Canadian Shield because of the threat posed by the United States.[1]

The place of transportation in Canadian history can be assessed by looking at the extent of government assistance.[2] Originally it took the form of building roads and timber slides. Then, when the government of Upper Canada took over the Welland Canal in 1841 further acknowledgement was given of its importance. Government involvement took on new significance with the arrival of the steam railroad. The first line was built in 1836 and numerous others were chartered in the next few years. However, by 1850 British North America had only sixty-six miles of track. The railway age in Canada did not begin until 1850. During the next ten years 2,000 miles of track were laid and for the next 100 years railroads were the dominant form of transportation.[3] Railway policy was transportation policy.

In theory, the railway boom of the 1850s was the work of private enterprise; in reality, it was private enterprise with a generous amount of government assistance. The Guarantee Act of 1849[4], which guaranteed half the bonds of any railroad over seventy-five miles in length once half of the line was completed, and the Municipal Loan Fund Act of 1852[5], which allowed municipalities to borrow money to assist construction, provided much of the necessary capital. The preamble to the 1849 Act offered a justification for government assistance that was repeated with only minor variations on innumerable occasions during the next several decades:

> Whereas at the present day, the means of rapid and easy communication by Rail-way, between the chief centres of population and trade in any country and the more remote parts thereof, are become not merely advantageous, but essential to its advancement and prosperity; and whereas experience has shown, that whatever be the case in long settled, populous and wealthy countries, in those which are new and thinly peopled and in which capital is scarce, the assistance of Government is necessary.

The almost total identification of the politicians of the day with the railroad interests provided equally valuable, if less tangible, assistance. It was an age when perhaps the most prominent Tory politician in the United Canadas could declare, "All my politics are railroads." Sir Allan MacNab, who made this claim, was the President of three railway companies, the Chairman of another and a director of at least two more.[6] MacNab was not unique, almost every politician of note was involved with at least one of the many companies.

As it turned out, it was only too easy to promote construction. Soon central Canada had more railways than it needed and a far larger debt than it could handle.[7] The first railway boom ended in 1857 leaving many municipalities with massive debts. The boom also produced Canada's first railway scandal. Sir Francis Hincks, who was responsible for much of the railway legislation, left Canada in 1855 to become the Governor of Barbados after he had been accused of profiting a bit too handsomely from a railway transaction.

(2) Early Regulation

(i) Railway Charters and Cabinet Committees

Direct assistance, in the form of subsidies, guarantees or land grants is only one example of the use of government intervention to alter economic behaviour. Taxation, including tax expenditures, government ownership and regulation are other examples. A minimal amount of regulation was present in the railway charters. For example, one act of incorporation stated that the same tolls were to be paid by all persons, "so that no undue advantage, privilege or monopoly may be afforded to any person or class of person." The government had the right to tax dividends when they exceeded a certain figure as a crude means of regulating rates.[8] Such clauses were common in charters in the 1840s.

In 1851 the Canadian government passed the Railway Clauses Consolidation Act[9], six years after the British government passed its first general railway act. As its name suggests it was a consolidation of clauses contained in charters including a fifteen percent limitation on profits. It also contained regulations in regard to the posting of rates, the election of directors and the operation of the train. For example, s. XXI provided that a steam whistle or bell, weighing at least thirty pounds, was to be blown or rung at least eighty rods from a highway crossing and this was to be continued until the highway was crossed.

Later in the same year an act to encourage the construction of a railway "throughout the whole length of this Province" was passed.[10] The railroads that had thus far been built or planned were relatively short lines that connected with American lines or terminated at ports. The above mentioned act was designed to encourage the construction of a main line that would connect with the shorter local lines. Like the construction of the canals, it was a deliberate attempt to encourage east-west transportation ties. Section XVII of the act created a Board of Railway Commissioners, composed of the Receiver General, the Inspector General, the Commissioner and Assistant Commissioner of Public Works and the Postmaster General, "for better ensuring the attainment of the objects proposed in the said Act." The Board, which soon became known as the Railway Committee of the Executive Council, was responsible for examining and approving the line the railway was to take, the gauge, the types of rails used and the method of construction as a means of protecting the public's money. Although the policing function was not entirely absent, Canada's first regulatory body (in the form of a cabinet committee) was created in an act designed to promote railway construction.

The collapse of the railway boom did not diminish the insatiable demand for more railways, it merely necessitated the emergence of a larger political unit to underwrite even more extensive construction. As much as it was an agreement to unite British North America politically, Confederation was a promise to span it with rails. Nova Scotia was attracted by a clause in the British North America Act promising a rail connection with the St. Lawrence River; British Columbia was promised a transcontinental railway within ten years; and Prince Edward Island was lured by a Dominion promise to assume its railway debts. With Confederation it became necessary to pass legislation that would be applicable to all the railways under the jurisdiction of the new Dominion. The Railway Act of 1868[11] was basically the 1851 Act and its amendments together with the 1857 Act for the Better Prevention of Accidents on Railways.[12] The Railway Committee of the Executive Council became the Railway Committee of the Privy Council.

In 1880, an agreement was finally reached with the newly formed Canadian Pacific Railway to construct the transcontinental railroad that had been promised to British Columbia almost ten years earlier.[13] Two clauses in the agreement are worth noting: the first stipulated that Parliament could not reduce tolls until a ten percent per annum profit had been made on the capital expended[14]; the second, Article 15, (s. 15) gave the company a practical monopoly in the west by prohibiting for twenty years the construction of federally chartered lines south of the Canadian Pacific. Criticism of Article 15 began immediately and this was soon followed by criticism of rates. In 1883 the Winnipeg Board of Trade argued that because of the generous assistance given to the company by the government (25 million acres of land and $25 million) the railroad should be operated at a loss.[15]

In Ontario, complaints focused on the issue of rate discrimination and the take-over in the 1880s by the Canadian Pacific and the Grand Trunk of some of the smaller companies. In 1883, a year after the Grand Trunk acquired the Great Western, its main rival in southwestern Ontario, a Toronto jeweller complained:

> From present appearances it seems doubtful whether in the near future the railways won't control this country instead of the country controlling the railroads.... Corporations are said to be soulless, and these are not exceptions to the rule as anyone may judge from the past record, either of the Grand Trunk of the Canadian Pacific.... They charge the extreme limit the law allows and in many cases go beyond it, and sufferers from their legalized tyranny have no chance of redress.[16]

(ii) Strengthening the Railway Committee

In 1882 Dalton McCarthy, a Conservative backbencher, introduced a bill calling for the creation of a Court of Railway

Commissioners and he continued to do so every year until 1885 when, with the support of the Toronto Board of Trade, one of his bills got as far as the Railway Committee of the House. Here it was met with opposition from both the railways and some shippers and was dropped in return for the promise of a Royal Commission.[17] The Commission was appointed in 1886, "to consider the advisability of creating a Commission."[18] In their Report the Commissioners agreed that rebates, unjust discrimination and disputes between railways were evils that should be eliminated. Then they went on to add, "... in many cases the railways are more sinned against than sinning and require protection from exactions and demands by the public frequently as unreasonable as the alleged offences of the railways themselves."[19] They thought there were two possible ways of implementing their recommendations: by creating an independent commission or by strengthening the powers of the Railway Committee of the Privy Council. They preferred the latter alternative because they considered it undesirable to create a body "beyond the direct criticism and control of Parliament."[20]

John A. Macdonald's government accepted the Royal Commission's recommendations and introduced legislation, "to make arrangements and to regulate matters between the trading community and farmers and the railways."[21] During the debate on the bill no one argued in favour of a commission. In fact, the main topics of discussion were the safety of crossings and the responsibility of railway companies for injuries to farm animals. The one more substantive issue raised concerned the power given to the Railway Committee to expropriate the property of one company for the use of another. The Liberal opposition was concerned about this and wanted to allow appeals to the Supreme Court rather than to the Privy Council (in effect the Cabinet). This proposal was rejected.[22]

In 1888, the same year in which the Railway Committee of the Privy Council was strengthened, the government reluctantly decided that the Canadian Pacific's monopoly clause had to go. It was originally granted not just to prevent competition, but to ensure that all freight would be shipped across Canada rather than through the United States. The Manitoba government, more interested in lower freight rates than nationalistic considerations, granted charters to companies to build lines south to the United States border. The federal government disallowed the charters until it became apparent that the political costs of further disallowances were greater than the economic costs of ending the monopoly. The results were immediate; with the help of a provincial subsidy the Northern Pacific moved north into Manitoba and the Canadian Pacific was forced to lower its rates from Winnipeg to Fort William in order to compete.[23]

Neither the strengthening of the Railway Committee of the Privy Council nor the elimination of the Canadian Pacific monopoly in the west produced the desired results. Complaints persisted, particularly about differences in rates for similar distances.[24] One factor which contributed to discrimination in rates was competition between the Canadian Pacific and the Grand Trunk and between the Grand Trunk and American companies. Rate wars were common in the United States in the 1880s and 1890s and the two Canadian companies occassionally became involved. They also became involved in the usually unsuccessful attempts to end the rate wars through industry wide agreements.[25] Competition lowered rates where it existed; where it was absent rates were increased to make up for lower rates elsewhere. This situation produced considerable disparity in rates.

(iii) The Crow's Nest Pass Agreement

The first general rate decrease produced by federal government action occurred in the late 1890s. However, it was not the Railway Committee of the Privy Council that was responsible. Rates fell as a result of the Crow's Nest Pass Agreement of 1897 between the Canadian Pacific and the federal government.[26] The company agreed to reduce the rate on grain and flour from all points in the west to eastern ports by three cents a hundredweight and rates were reduced by 10 to 33 1/3 percent on several commodities going to the west such as agricultural implements, binder twine, window glass and fresh fruit. In return, the federal government gave the Canadian Pacific a subsidy of $11,000 per mile to construct a 330 mile line through the Crow's Nest Pass to Nelson, British Columbia.

The agreement contained all the important elements of Canadian railroad policy: it subsidized construction; it opened up the mineral-rich interior of southern B.C. for development; it insured that the region would be served by a Canadian rather than an American railway; and it countered regional grievances. The agreement was also designed to reward old friends and to win new ones for the recently elected Liberal government. The owners of the Toronto Globe, a traditionally Liberal newspaper, profited handsomely. However, the C.P.R. which was well known for its Conservative sympathies was not won over. It accepted the Liberal government's money, but continued to support the Conservatives.[27] Further rate reductions took place as a result of a 1901 agreement between the Manitoba government and the Canadian Northern (the Manitoba Agreement).[28] Although not a party to the original agreement, the Canadian Pacific eventually lowered its rates to comparable levels. As a result, between 1903, when the Manitoba Agreement went into effect, and 1918, rates were below those allowed by the Crow's Nest Pass Agreement.

(3) The Creation of the Board of Railway Commissioners

(i) The Case for Regulation

By the end of the 1890s it was apparent that the Railway Committe of the Privy Council was not appropriate for the task of regulating Canada's railroads. In 1899, S.J. McLean, an economist and a lawyer, was appointed to a one-man commission to study the problem. McLean amply demonstrated the need for regulation.[29] In his Report he cited numerous examples of rate grievances. The cost of shipping a car load of sugar from Toronto to Barrie, a distance of 64 miles, was the same as the cost of shipping a car load from Toronto to Windsor, a distance of 230 miles. It cost less to ship nails from Hamilton to Elmira, a distance of 63 miles, than from Brantford to Elmira, a distance of 34 miles.[30] There were also complaints about freight classification, unannounced rate changes, rebates and excessive transcontinental rates. McLean rejected the claim that competition would act as a regulator. Where competition did exist it either took the form of destructive rate wars or, more often, ended in rate agreements, i.e., private cartels. Regulation was necessary because, "The large amount of capital demanded by railroad construction, added to the question of situation, makes the railroad an economic monopoly. The prices charged under such conditions will be on a monopoly, not on a competitive basis."[31] McLean also invoked the public interest argument:

> It must be remembered that the railway occupies a dual position; it is not only a body organized for gain, but also a corporation occupying a quasi-public position and performing public functions.... Regulation of some sort must exist.... The question of regulative control can be met in one of two ways, State ownership or Commission regulation. There is no middle course.[32]

His case for regulation was almost a restatement of the traditional text-book justification - to correct or control the improper allocation of resources caused by monopoly as a means of furthering the public interest.

McLean ruled out the continued use of the Railway Committee of the Privy Council as a regulatory body. The members' lack of technical training, the dual political and administrative function of the Committee; the lack of tenure; and its inability to move around the country, which meant that complainants had to travel to Ottawa, were the reasons given.[33] As evidence, McLean pointed out that of the 408 cases that came before the Committee between 1889 and 1896 only seven dealt with rates,[34] but as his Report suggested, rates were a major grievance. Although McLean preferred an independent commission, he rejected both the British and American models. The defects of both were similar: a reliance on the courts for enforcement; insufficient attention was paid to the technical qualifications of the members; the expense to the complainant was often too great; and the tenure provisions were inadequate.[35]

While he was a staunch advocate of regulation, McLean was not unaware of the problems faced by the railroads. He was confident that, "The regulation will be in the interest not only of the shipper, but also of the railway." He was also aware that, "no species of regulation can remove all the complaints that have arisen."[36] On the whole though, his attitude towards regulation was optimistic, perhaps even naive. He firmly believed that if regulation was taken out of the hands of politicians and given to a specialized commission staffed by well-qualified professionals, the public interest would be served. McLean's attitude was not unique, it was shared by a growing body of middle-class professionals in both Canada and the United States.

McLean's Report obviously affected the government's decision to create an independent, specialized commission. There was also widespread public support, particularly in Ontario and the West.[37] In the Laurier Papers there are letters from the South Perth Reform Association and the North Grey Farmers' Institute urging the creation of a commission.[38] In February 1903, delegates from several farm organizations, the Toronto Board of Trade and the Canadian Manufacturers' Association went to Ottawa to express their support.[39]

(ii) The Legislation

Legislation to amend and consolidate The Railway Act[40] was introduced in April 1902 and then re-introduced almost a year later in March 1903. On the latter occasion, the Honourable A.G. Blair, the Minister of Railways and Canals, mentioned several things he hoped the commission would be able to do: lessen open rate wars; equalize long and short haul rates; exercise warning or police powers; silence unjust criticism of railways; help the small shipper; and compile useful statistics.[41] Blair's desire to lessen rate wars, which were neither common nor particularly serious, and end unjust criticism suggests that he thought the commission would help the railways as well as protect the public interest.[42] There was almost no opposition in the House of Commons to the proposal to create a specialized regulatory body. Some members wanted it to have jurisdiction over the government-owned Intercolonial Railway, another member wanted to legislate a maximum limit for passenger rates. Although the debate was prolonged, there was generally little recognition of the significance of the legislation they were passing.

The major challenge to the Bill came in the Senate where seventy amendments were made. The House willingly accepted fifty-eight of them. It is difficult to generalize, but the thrust of the other twelve was to weaken the legislation. The Senate wanted to limit the Board's jurisdiction over local lines connecting with through lines to the immediate area of the connection and it wanted to make it easier to appeal Board decisions to the courts. Both T.G. Shaughnessy, President of the Canadian Pacific and Charles Hays, General Manager of the Grand Trunk, appealed to Laurier to accept the latter amendment.[43] Even Shaughnessy's claim that a failure to do so would scare off foreign investors did not convince Laurier. After three conferences between the managers of the Bill in the House and those in the Senate, it was finally agreed that the appeal amendment would be dropped and the amendment limiting the Board's jurisdiction over local lines accepted.[44]

The Board of Railway Commissioners was given jurisdiction over federally chartered railways, provincially chartered railways which had been declared by the federal government to be, "a work for the general advantage of Canada," and local lines where they connected with lines under the Board's authority.[45] It was given the power to act on its own motion as well as upon request. Decisions or orders of the Board were subject to review and/or appeal by the Governor in Council who could change or rescind any order or decision upon petition or on his own initiative. Appeals to the Supreme Court were possible, "upon any question which in the opinion of the Board is a question of law, upon leave therefor having been first obtained from the Board."[46] The right to appeal decisions was deliberately limited in order to avoid the delays that characterized the operation of the British Railway Commission and the American Interstate Commerce Commission.[47]

(iii) Railroads and Regulation

Gabriel Kolko has persuasively argued that in the United States," the railroads, not the farmers and shippers, were the most important single advocates of federal regulation from 1877 to 1916".[48] Preliminary evidence suggests that this was not the case in Canada. The situation in Canada differed in two important ways: the rate wars that had wrought havoc with several American companies were less of a problem in Canada (the financial condition of both the Canadian Pacific and the Grand Trunk was sound and improving); and while the alternative to federal regulation in the United States was state regulation, the alternative to the Board of Railway Commissioners was the ineffectual Railway Committee.[49] Although the railway companies did not seek regulation, it would seem that they did not oppose it with much vigour. There are no letters in the Laurier Papers expressing opposition, nor is there any criticism in The Railway and Shipping World, a periodical, "Devoted to Steam & Electric Railway, Shippping, Express, Telegraph & Telephone Interests." Probably they realized it was inevitable and put their faith in amending the Bill in the Senate and in influencing the selection of the Commissioners. Charles Hays, the General Manager of the Grand Trunk, suggested at least three different men, one of whom had been the President of the Union Pacific. Although none of his suggestions were accepted, Hays did not despair, "... I trust I may continue to rely on the assurance you [Laurier] have always heretofore given me that no one would be appointed who was not acceptable to this Company, and that the nominee for Ontario may be some one we know and have confidence in."[50]

The railroads had little reason to fear the B.R.C., T.G. Shaughnessy, President of the Canadian Pacific, was pleased with the selection of Blair, the former Minister of Railways and Canals, as the first Chairman since he had recommended him to Laurier.[51] In addition, since it was created during a period of increasing competition, it might prove to be a useful constraint on rate wars. In 1903, the railway companies and the federal government needed one another and neither could afford to antagonize the other. Unlike the Interstate Commerce Commission, the B.R.C. was created during a period of prosperity when the demand for railroad services outstripped the supply. In 1901 when the heaviest wheat crop yet was harvested there was a serious shortage of box cars and only about one third of the crop had been moved to ports when navigation closed for the winter.[52] Thus, western farmers were demanding more railroads at the same time that they were calling for the creation of a regulatory commmision. The Canadian Northern was expanding its operations in the West but it did not have any connections with the rest of the country and it alone was not the answer. The Grand Trunk with extensive mileage in the central Canada had no connections with the west. The obvious solution was to convince, or force, the two companies to cooperate. The Laurier government refused to use the coercive power of the state when it might have done the most good and instead decided to assist the Grand Trunk in the construction of a second transcontinental line.

In the 1850s, the 1880s, and again in the first decade of this century, the central government undertook new regulatory initiatives at the same time as it was committing itself to finance extensive construction programs. It has been suggested that regulatory agencies play a three-fold function - policing, promoting and planning - with the latter two functions being added to the original one of policing.[53] It would appear that in the regulation of railways, the promotional function was not added on, it was there from the beginning. During 1903-1904, when both the regulation of railways and the government's decision to assist the Grand Trunk were being debated, a third form of intervention - government ownership - was presented as an option. Robert Borden, the Leader of the Conservative Opposition, argued that if Ottawa was going to build the most difficult portion of the new transcontinental, from Winnipeg to Moncton, and then lease it to the Grand Trunk, it should build and operate the whole thing. He justified his position by quoting the Interstate Commerce Commission:

> The railroad is justly regarded as a public facility which every person may enjoy at pleasure, a common right to which all are admitted and from which none can be excluded.... The railroad exists by virtue of authority preceding from the state and thus differs in its essential nature from every form of private enterprise.[54]

In addition to believing that, as a public facility, a railroad was a natural object of government ownership, he argued that government ownership would confer three benefits. It would provide greater security for the large government investment. It would ensure the use of Maritime ports rather than the Grand Trunk's Portland, Maine terminus. Third, it would allow greater control of rates. In other words, Borden hoped to achieve through government ownership some of the goals which have been traditionally sought through regulation. Instead, the Liberal government opted for "private enterprise at public expense."[55] The expense was considerable. Up to the end of 1916, the federal government provided the Grand Trunk Pacific with assistance to the total of $70 million.[56] It spent more than twice this much building the eastern section from Winnipeg to Moncton.[57]

(iv) Activities of the Board

The Railway Act was amended in 1906 to give the Board of Railway Commissioners jurisdiction over express, telegraph and telephone companies.[58] Two years later, its size was doubled from three to six members.[59] Initially, most of the important decisions of the Board dealt with freight rates and charges of unjust discrimination.[60] After the mid-1890s rates remained relatively stable in central Canada and B.C. while they fell on the prairies as a result of the Crow's Nest Pass Agreement and the Manitoba Agreement of 1901. Since this was a period of rising prices, particularly for wheat, rates actually fell relative to the cost of most commodities. Complaints about excessive rates gradually gave way to more complex complaints about unjust discrimination. The concern with discrimination was not new, as was noted earlier, it was prohibited in the early railway charters. The Railway Act of 1903 prohibited discrimination against persons:

> tolls shall always, under substantially similar circumstances and conditions be charged equally to all persons, ... in respect of all traffic of the same description and carried in or upon a like kind of cars, passing over the same portion of the line of railway....

and between different localities:

> The Board shall not approve or allow any toll, which for the like description of goods or for passengers, carried under substantially similar circumstances and conditions in

> the same direction over the same line, is greater for the shorter than for the longer distance, ... unless the Board is satisfied that owing to competition, it is expedient to allow such toll.[61]

The Act gave the Board the power to decide what were "substantially similar conditions" and to determine when unjust discrimination existed.[62]

The Board quite rightly maintained that differences in rates did not necessarily constitute unjust discrimination. Many differences in rates were the result of differences in costs and, as the two quotations above suggest, the Railway Act recognized this fact. However, it was probably inevitable that at some point the Board would have to decide whether higher costs always justified higher rates. To an extent, this was the issue in question in the Coast Cities' Case (1908). It was a result of complaints by British Columbia Boards of Trade that eastbound rates from B.C. were higher than rates for the same distance westbound from Winnipeg giving merchants from the latter city an unfair advantage. The Board disagreed:

> No inference can be drawn from a mere comparison of distances upon different portions of railways and ...it does not constitute unjust discrimination for a railway company to charge higher rates for shorter distances over a line having small business or expensive in construction, maintenance of operation, than over a line having large business or comparatively inexpensive in construction, operation and maintenance.[63]

Although it denied that unjust discrimination existed, the Board did order a reduction of eastbound rates on those articles (settlers' effects) which already enjoyed reduced westbound rates - agricultural implements, window glass, binder twine, etc. - as a result of the Crow's Nest Pass Agreement. In effect, the Board extended the terms of the Agreement. An even more complicated issue was raised in the Western Rates Case (1914). The Winnipeg Board of Trade was joined by other western Boards of Trade in charging that the B.R.C. was not adequately dealing with the disparity between rates in eastern and western Canada. They argued that the government should legislate to ensure that rates in the west were no higher except when dictated by higher costs of operation. The railways argued that rates in central Canada were lower because of water competition and competition from American railways. After examining the evidence for three years the Board finally concluded that the discrimination was justified. Nevertheless, the Board did reduce rates in Alberta and Saskatchewan. The general effect of the Board's decisions prior to World War I was to equalize rates, although certainly not to the extent that many Westerners would have liked.

The Board believed that in dealing with a rate application by a railway company it was to be, "concerned with reasonableness of rates, not with the rate of profit which the applicant is making."[64] In practice it was not always easy to adhere to this principle. The difficulty lay in the fact that by 1914 the C.P.R. was in a healthy financial position while the Grand Trunk and the Canadian Northern were on the verge of bankruptcy. The Board had to deal with this problem when the railways operating east of Port Arthur applied for rate increases in 1915.[65] The rate increases were approved because of increased costs of operation and also because they would help equalize rates in eastern and western Canada. This was the first significant rate increase since the creation of the Board in 1904.

Rapidly increasing operating costs and the precarious position of the Grand Trunk and the Canadian Northern soon produced requests for more increases. Approval was given despite the argument by the Grain Grower's Association of Manitoba that government assistance should be given to the two troubled companies rather than allow increases.[66] As rates gradually rose during World War I, the B.R.C. soon found itself up against the Crow's Nest Pass Agreement. This agreement, which legally applied only to the C.P.R., was deemed to be a "Special Act" and hence outside the jurisdiction of the Board. It could not raise that company's rates above those in the agreement and if it raised the rates on the other two major lines it would be creating the very discrimination it was designed to eliminate. The problem was temporarily eliminated in 1918 when the government suspended the Agreement.[67]

This was too late to help the Grand Trunk and the Canadian Northern. Their fate was sealed. A 1917 Royal Commission recommended that the federal government should take over the two companies and combine them with the lines it already owned to form one national system.[68] This solution was ultimately adopted and the Canadian National Railways came into being.[69] It was a typically Canadian solution. If the situation had occurred in the United States the two companies probably would have been allowed to slide into bankruptcy, or, as the one American commissioner recommended, the two companies' holdings would have been rationalized with the hope that the end of the war would bring prosperity. In either case, the Canadian Pacific would have been allowed to buy all or part of their assets.

While the Board of Railway Commissioners had failed to bring order and stability to the railway industry, it could hardly be held solely responsible for this failure. The lack of consistency in government policy made its task almost impossible. The B.R.C. was designed to "rationalize" rail transportation by making rates more uniform, by lessening the possibility of rate wars, by supervising new construction and by setting standards for operation. At the same time, other aspects of the federal government's policy contributed to overbuilding and the duplication of services which eventually resulted in economic chaos. The Board was forced to strike a delicate balance between the financial needs of the prosperous Canadian Pacific and those of the impoverished Canadian Northern and Grand Trunk while at the same time attempting to placate regional demands by avoiding "unjust discrimination." The collapse of the Canadian Northern and Grand Trunk eliminated the former problem, but created the equally difficult ore of regulating a government owned company in competition with a privately owned company. It would seem that for every problem government intervention solved it created another.[70]

(4) Regulation and Regionalism

(i) The Demands of the Western Wheat Economy

Regional considerations exercised a powerful influence on the early years of railroad regulation. The West's traditional demand that rates in eastern and western Canada should be equalized was at least partly met by the Board's decisions referred to in the previous section. Another set of Western demands were met by quite a different type of regulation.

Western complaints about the elevator companies and the railways produced the 1899 Royal Commission on the Shipment and Transportation of Grain.[71] The complaints against the railroad companies centred on their preference to load grain from elevators rather than from loading platforms or flat warehouses and on the difficulty of getting box cars. Given that the Royal Commission was composed of members sympathetic to these complaints (most of them were western farmers), it is not surprising that it produced a report supporting the farmers' demands. The Commission recommendations that railways be required by law to permit the construction of flat warehouses; construct loading platforms if requested; and provide cars as a right were incorporated into the Manitoba Grain Act of 1900.[72] A warehouse commissioner was appointed to enforce the Act. Subsequent amendments and the successful prosecution of a C.P.R. employee in the famous Sintaluta case of 1902 made the Act more effective. Although generally sympathetic to the interests of the railways, the federal government was willing to introduce regulations that could only prove to be a burden to them when the demands of the developing wheat economy so required. The fact that the railway companies, powerful as they were, could not deliver as many votes as western farmers was undoubtedly a consideration.

(ii) Freight Rates and Politics

In the 1920s regional pressures took on an even more political character with the election of 65 Progressives in 1921 and the birth of the Maritime Rights Movement.[73] Demands that rates should be equalized across the country were replaced by demands that regional competitive disadvantages should be met with special rates. When the Crow's Nest Pass rates were agreed upon in 1897 the western grain economy was just being established and they applied only to the Canadian Pacific's 3000 miles of track. When they were finally restored in 1924, as a result of considerable political pressure, the western grain economy was firmly in place. In their restored statutory form they applied to the shipment of grain and grain products over 17,000 miles of track.[74] The restoration of the Crow's Nest Pass rates is an example of direct government action (the B.R.C. was bypassed) designed, not to enhance competition, overcome information limitations or even internalize externalities, but to meet the demands of a politically powerful regional interest.[75] It was income redistribution disguised as direct regulation. It was also part of a complicated regional trade-off: the minority Liberal government needed to overcome the discontent caused in the West by its failure to significantly lower the high tariffs so beneficial to central Canadian manufacturers.[76]

In the east Maritimers were unhappy with the inclusion of the Intercolonial Railway in the Canadian National Railways. They were also unhappy with the equalization of rates which since 1912 had raised rates in the Maritimes proportionately more than elsewhere. Rates in the Maritimes had been significantly lower than elsewhere, in part because of water competition, but mainly because the federal government-owned Intercolonial operated at a loss. These were two of the grievances which produced the Maritime Rights Movement in the early 1920s. Its strength became apparent to the Liberal government when it won only six of 29 Maritime seats in the 1925 federal election. A Royal Commission was appointed immediately.[77] Among other things, it recommended a twenty per cent reduction in freight rates. The debate on the legislation to implement this recommendation was enlivened by the arguments of some of the western members. A United Farmers of Alberta member and a Progressive member criticized the legislation on the grounds that it was wrong in principle and would not help the region solve its real problems. They claimed that, unlike the Crow's Nest Pass Agreement, this was a subsidy and that the real problems facing the Maritimes were caused by the tariff and the control of credit by central Canadian bankers.[78] Another member attempted unsuccessfully to insert a sunset provision limiting the legislation to ten years. He perceptively pointed out that otherwise it would be assumed that the subsidy was granted in perpetuity.[79] The Maritime Freight Rates Act[80] was passed in 1927 giving the reduced rates statutory status and placing them outside the jurisdiction of the Board of Railway Commissioners.

Although the restoration of a special rate for western grain and the Maritime Freight Rates Act were politically sound and may even have been morally just they did not necessarily make sense from an economic point of view.[81] Both the Progressives and the Maritime Rights Movement had disappeared by 1930, but the economic problems of the two regions remained. From the political vantage point one of the great virtues of regulation is its symbolic value. It can be used to give the appearance that something is being done, and thus satisfy public opinion, when nothing of substance is changed. The Board of Railway Commissioners was bypassed because it could not be trusted to grasp this essential fact. As a symbol, one Maritime Freight Rates Act was worth dozens of Board decisions. Another virtue of regulation is that it can disguise costs so shrewdly, through cross-subsidization for example, so as to make them seem unimportant. Although they stated the argument rather crudely, the two Members of Parliament who argued against the rate reduction were discussing a fundamental truth about Canadian economic development. No amount of tinkering with freight rates was going to weaken the economic and political dominance of central Canada.

(5) Regulating in a Mixed Economy

One of the factors which differentiates regulation in Canada from the American variety is the presence of government-owned enterprises. They have frequently enjoyed a special relationship with regulatory agencies. In some cases they have simply been less subject to regulation. The most obvious example is the Intercolonial Railroad which was not under the B.R.C.'s jurisdiction until it became part of Canadian National Railways in 1919. In 1903, A.G. Blair, the Minister of Railways and Canals, explained this exclusion as follows: "Is there any institution in the country more amenable to public opinion and to the demands which the public make, or one more likely to be run in the general interest than is the government railway?"[82] The Canadian National was placed under the Board's jurisdiction with one notable exception, the power to approve the construction of new lines. It was not necessary to get the approval of the Board, only the agreement of the Minister of Railways and Canals and the necessary money from Parliament. Freed from the need to justify construction to the Board's satisfaction, there was an obvious temptation to build lines that satisfied political rather than economic needs. This temptation was not always resisted.

For the most part, the Canadian National and the Canadian Pacific competed on equal terms. There was even hope that the two might be able to co-exist in a state of benevolent competition. This hope was shattered by the arrival of the depression. Soon there were too many trains, too many miles of track and too little freight. A Royal Commission was appointed to study the problem.[83] The result of the Commission's efforts was The Canadian National - Canadian Pacific Act of 1933.[84] It was designed to encourage co-operation and eliminate duplication of services. The B.R.C. was given additional authority to supervise co-operation and approve the abandonment of lines. This attempt to rationalize the national rail system met with only limited success and the financial benefits were small. The difficulties ranged from the obvious problem of weighing the effect line abandonment would have on communities left without rail service to unanticipated problems such as the Canadian National's fear that if it used the Canadian Pacific's Windsor Station it would be more difficult to continue its profitable business of delivering fresh halibut from Prince Rupert to New York and Boston.[85] It was necessary to use regulation in an attempt to induce cooperation since the alternative of operating both companies under the management of the Canadian Pacific was politically unacceptable.

(6) The Transport Act

The problems that the Canadian National-Canadian Pacific Act was designed to solve were simply old solutions coming back to haunt the federal government. As Harold Innis has put it, "Government intervention as a means of solving problems during a period of expansion creates problems to be solved by new types of government intervention during a depression."[86] The Transport Act of 1938[87] can be viewed in this context. Admittedly, this Act was a recognition of the growing importance of new modes of transportation. It is also safe to say that it was an attempt to help the railways. Politicians in Ottawa were only too aware of their problems since they had to deal annually with the huge deficits of the Canadian National. When the legislation was first introduced in 1937, Raoul Dandurand, Minister without Portfolio, explained that it was intended to remedy, "the unfair competitive situation which has come about by reason of the fact that heretofore only the railways have been subjected to the jurisdiction of this Parliament, as represented by the Board of Railway Commissioners...."[88] While explaining his sympathy for the Bill, Arthur Meighen, the Conservative leader in the Senate, pointed out: "The railways take the position that the thoroughness and severity of regulation to which they must submit should have some counterpart in respect of their competitors, or that the restrictions and supervision which apply to them should be removed."[89] To a degree, the proposed legislation did both. It called for the creation of a Board of Transport Commissioners with jurisdiction over transportation by aircraft, ships and motor vehicles (trucks and buses) as well as railways. It also proposed that railways be allowed to negotiate certain rates with shippers, subject to the Board's approval. The latter was designed to allow the railways the same freedom as other forms of transportation. There was also a clause in the Bill authorizing the provinces to give the Board the right to regulate intraprovincial motor vehicle transportation. According to one Senator, the legislation was intended to help the shipping industry which, it was argued, suffered from "cut-throat competition" on the Great Lakes. The three largest shipping companies were reported to favour the Bill while the smaller companies were opposed.[90] Nothing came of this Bill; it was defeated in the Senate by the Conservative majority before it got to the House.

When the legislation was reintroduced in the House in the following year much the same explanation was given for its need. If anything, C.D. Howe, the Minister of Transport, put even more emphasis on its value to the transportation industry: "... the object of this bill is to promote the stabilization of the transport industry in Canada, in the public interest as well as in the interest of all those engaged in transportation."[91] It differed from the legislation introduced in 1937 in two significant ways: regulation of motor vehicle transportation was dropped; and the shipping of bulk goods - coal, wheat, iron ore, etc. - was not to be regulated. The governments of Ontario, Manitoba and Saskatchewan had opposed the regulation of motor vehicles while those involved in the grain trade opposed the regulation of bulk goods.[92] The legislation was clearly designed to reduce competition as much as it was designed to enhance it, particularly with regard to rail and water transportation. Like the railways, shipping companies in the 1930s were suffering as a result of overbuilding in a period of prosperity. The number of ships and the capacity of the Great Lakes fleet more than doubled in the 1920s. With the depression, the collapse of the western grain economy and the increasing use of the port of Vancouver the companies fell on hard times.[93] The licensing provisions and the prohibition against undue preference in levying rates were designed to eliminate the destructive competition which resulted from unused capacity. As well, it was hoped that with an improvement in the shipping industry, railways would be exposed to less undercutting of rates.

As J.R. Baldwin suggests, The Transport Act of 1938 can be viewed as a forward looking piece of legislation that recognized the importance of modes of transportation other than railways and allowed railways to make use of agreed charges.[94] At the same time, it must be kept in mind that it was passed in a period of crisis for the railway and shipping industries. Although it was to be a new policy for the future it was a desperate attempt to deal with the past. C.D. Howe suggested that it was almost a case of helping an old friend through troubled times: "Transportation in Canada has done much toward the building of our national economy. Through this bill we can give it a measure of protection and assistance without imposing any burden on the Canadian people."[95]

(7) The Composition of the Board of Railway Commissioners

Before leaving the Board of Railway Commissioners, which was superseded by the Board of Transport Commissioners in

1938, it will be useful to make some observations about its composition. Of the eight Chief Commissioners who served on the Board, three were former federal politicians (all had been Cabinet Ministers and one was an acting party leader), another left the Board to join Borden's Cabinet and the other four were jurists immediately prior to their appointment, although two of them were former provincial politicians.[96] All were lawyers since this was a requirement for the position. A.W. Currie has estimated that up to and including 1958, at least two-thirds of the appointees to the Board and its successor the Board of Transport Commissioners had been previously elected to political office. This includes three former provincial premiers in addition to A.G. Blair, the first Chief Commissioner, who was the Premier of New Brunswick before he joined Laurier's Cabinet. During those years only two appointees came from the railway industry except for the four men who were union representatives. The agricultural community has been better represented than the railway industry.[97]

This supports recent studies suggesting that members of Canadian regulatory agencies are more frequently drawn from the public sector (i.e., civil servants or ex-politicians) than are their American counterparts.[98] One way in which the composition of the B.R.C. - B.T.C. differed from the agencies studied by recent researchers was in the number of former politicians who were members. Still, things have not changed that much - the first two Presidents of the Canadian Transport Commission, created in 1967, were both ex-Cabinet Ministers. Perhaps there is a feeling that the regulation of transportation is too important, or too politically sensitive, to be trusted to professional public servants or to people from the regulated industries or even other industries.

(8) Regulation of Shipping and Air Traffic

Before jurisdiction over transportation by air and by ship was given to the Board of Transportation Commissioners in 1938 regulation of these activities was limited. Federal regulation of air traffic began in 1919 with the The Air Board Act.[99] It did little more than provide for the licensing of pilots, the registration of aircraft and the making of regulations for safe operation. No mention was made of rates. The federal government's right to regulate air traffic was not firmly established until 1932 when a Judicial Committee of the Privy Council decision effectively removed all doubt.[100] In 1936 jurisdiction was transferred from the Minister of National Defence to the newly created Department of Transport. In the following year, Trans-Canada Air Lines was created as a subsidiary of the federally-owned Canadian National Railways to offer regular passenger service. With the passage of The Transport Act in 1938, provision was finally made for the regulation of rates.

Regulation of shipping pre-dates Confederation. In the Revised Statutes of 1927 the Canada Shipping Act is a huge statute over 200 pages in length with more than 950 sections. In contrast, the Aeronautics Act (previously The Air Board Act) has a mere eight sections. The Shipping Act regulated such things as the employment and classification of seamen, the inspection of ships and even the rate at which salt in sacks was to be discharged at ports in Quebec. It did not regulate rates. Limited control over specific rates was acquired under The Inland Water Freight Rates Act of 1923.[101] It was a direct result of the Royal Commission on Lake Grain Rates which had been appointed in 1922 to investigate complaints that four of the largest shipping companies on the lakes had combined to keep rates on grain shipments higher than they were between American ports or between a Canadian and an American port.[102] American ships were prohibited from shipping from one Canadian port to another and thus could not offer competition. The Inland Water Freight Rates Act provided for the filing of rates with the Board of Grain Commissioners created in 1912 by the Canada Grain Act, and gave the Board the power to set maximum rates.[103] At the same time, the Canada Shipping Act was amended to empower the Governor in Council to allow American ships to enter the Canadian trade under certain circumstances.[104] Together, these two sections were intended to reduce the cost of shipping grain. Along with such legislation as the Manitoba Grain Act (1900) they were part of a gradual process which eventually resulted in the regulation of almost every aspect of the economically and politically important grain trade.

As was noted earlier, grain shipments were excluded from the provisions of the Transport Act of 1938. With its passage, regulation of shipping was divided among the Board of Transport Commissioners, The Board of Grain Commissioners and the Department of Transport under the authority of the Canada Shipping Act. Not only was jurisdiction divided, the goals of the relevant acts differed. While the Inland Water Freight Rates Act was supposed to increase competition, The Transport Act was intended to protect the shipping industry from destructive competition.

(9) Conclusion: Balancing Conflicting Objectives

The goal, "of co-ordinating and harmonizing the operations of all carriers engaged in transport by railways, ships and aircraft,"[105] as set out in The Transport Act of 1938 has been an elusive dream relentlessly pursued by regulators and Ottawa politicians. It was still being pursued in the National Transportation Act of 1967 which calls for, "an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost."[106] If efficiency had been the only goal pursued then perhaps it could have been achieved. In addition, regulation was asked to achieve a number of other goals: economic growth and development, the movement of goods through Canadian ports; the satisfaction of regional expectations; and the protection of certain industries. Thus, in the National Transportation Act we find the stipulation that:

> each mode of transport, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute ... an undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports....[107]

In 1977, Bill C-33 was introduced to repeal the section of the Act just quoted. It stated, "the objective of the transportation policy for Canada is to achieve a transportation system that (a) is efficient, (b) is an effective instrument of support for the achievement of national and regional social and economic objectives and (c) provides accessibility and equity of treatment for users...."[108]

This tension between efficiency and "the achievement of national and regional social and economic objectives" has been a constant in the regulation of transportation, particularly in regard to railways. What has changed is the form that regulation has taken and these changes have been the greatest (until very recently) and the most interesting, with respect to railways. Initially, the regulation of railways was accomplished through constraints placed in their charters. Then with the passage of the Railway Clauses Consolidation Act and the creation of the first Board of Railway Commissioners in 1851, an attempt was made to introduce a more general form of regulation. This was only a partial attempt since the Consolidation Act did not apply to railways chartered before 1851 and even subsequent charters such as that of the Canadian Pacific contained important regulatory clauses. The obvious shortcoming of this form of regulation was that it was difficult to enforce. The next important development was the strengthening of the Railway Committee of the Privy Council in 1888. This was a response to the discontent resulting from the take-over of several of the smaller companies by the Canadian Pacific and the Grand Trunk and from the rates being charged. The disappearance of the smaller companies should have made it easier to regulate rates but this did not happen. The Railway Committee was more responsive to the needs of the railways than to the public interest.

Effective regulation of rates only arrived with the formation of the Board of Railway Commissioners, in 1904. Its creation was indicative of the emerging belief in the necessity of experts, or at least specialists. Yet when one looks at the men who were appointed one finds this tempered with the traditional belief that regulation was best left in the hands of politicians. S.J. McLean, who wrote the Report recommending the Board's creation and later served as a Commissioner for thirty years, stands out as a single exception. Prior to joining the Board he taught economics. The disappearance of the Board of Railway Commissioners in favour of the Board of Transport Commissioners in 1938 symbolically marked the end of the railway age in Canada just as the creation of the first Board of Railway Commissioners in 1851 marked its birth. The exciting new form of transportation that required regulation in the 1850s was in the eyes of the government a tired declining industry that needed protection in the 1930s.

A great deal has been expected of regulation. It has been asked to achieve efficiency and equity, soothe regional grievances, encourage economic growth, and, one might suggest, win votes. At the same time, the federal government has used loan guarantees, subsidies, tax expenditures and government ownership in attempts to achieve these same, often conflicting goals.[109] The effects of these actions have been much the same as the effects of regulation: prices were altered; entry was limited; competition was encouraged and, at other times, discouraged; and income was redistributed through cross-subsidization. The end result was perhaps to make the task of regulation even more difficult and ensure that few, if any, of the goals would be realized. Efficiency has not been achieved; the survival of Atlantic ports is in doubt; American economic penetration has not been stopped; and regional discontents remain.

NOTES

1. On the question of whether the Canadian Pacific was built ahead of demand see Peter George, "Forward" in H.A. Innis, A History of the Canadian Pacific Railway (Toronto and Buffalo: University of Toronto Press, 1971, first published in 1923).

2. See H.G.J. Aitken, "Defensive Expansionism: The State and Economic Growth in Canada," in W.T. Easterbrook and M.H. Watkins (eds.) Approaches to Canadian Economic History (Toronto: McClelland and Steward Limited, 1967), pp. 183-221.

3. As of 1968, the railways still carried more domestic freight than any other mode of transport, 38 percent of all ton-miles. In terms of the amount carried in simple tons, road and rail transport were approximately equal. Among commercial carriers of passengers, in terms of inter-city passenger miles, railways ranked third in 1968 behind buses and airplanes. H.L. Purdy, Transport Competition and Public Policy in Canada (Vancouver: University of British Columbia Press, 1972), pp. 58-59 and 74.

4. Statutes of the Province of Canada, An Act to provide for affording the Guarantee of the Province to the Bonds of Railway Companies on certain conditions, and for rendering assistance in the construction in the Halifax and Quebec Railway, 1849, 12 Vic., c. XXIX.

5. Statutes of the Province of Canada, An Act to establish a Consolidated Municipal Loan Fund for Upper Canada, 1852, 16 Vic., c. XXII.

6. Peter Baskerville, "Sir Allan Napier MacNab," in Dictionary of Canadian Biography, Vol. 9 (Toronto and Buffalo: University of Toronto Press,1976), pp. 519-527.

7. By 1866, central Canada had over 2,000 miles of track built with the help of $40 million in loans from the provincial and municipal governments. "Virtually the whole of the $40 million, which made up over 40 per cent of the total provincial and municipal debt, was uncollectible." The two Maritime provinces, New Brunswick and Nova Scotia, had spent $10.5 million on 379 miles of track. D.V. Smiley (ed.) The Rowell-Sirois Report: An Abridgement of Book I of the Royal Commission Report on Dominion-Provincial Relations (Toronto: McClelland and Stewart Limited, 1963), pp. 20-22.

8. Statutes of the Province of Canada, An Act to Incorporate the Montreal and Lachine Rail-road Company, 1846, 9 Vic., c. LXXXII, ss. XLII and XLIV.

9. Statutes of the Province of Canada, 1851, 14-15 Vic., c. LI.

10. Statutes of the Province of Canada, An Act to make provisions for the construction of a Main Trunk Line of Rail-way throughout the whole length of this Province, 1851, 14-15 Vic., c. LXXXIII.

11. Statutes of Canada, 1868, 31 Vic., c. 68.

12. Statutes of the Province of Canada, 1857, 20 Vic., c. XII.

13. The Company did not come into being until 1881, Statutes of Canada, An Act Respecting the Canadian Pacific Railway, 1881, 44 Vic., c. 1. See Innis, op. cit.; and Pierre Berton, The National Dream: The Great Railway, 1871-1881 and The Last Spike: The Great Railway, 1881-1885 (Toronto: McClelland and Stewart, 1970 and 1971).

14. Ibid., "Schedule A," s. 20.

15. Innis, op. cit., p. 176.

16. Quoted by Michael Bliss, A Living Profit: Studies in the Social History of Canadian Business, 1883-1911 (Toronto: McClelland and Steward, 1974), pp. 40-41.

17. P.B. Waite, Canada, 1874-1896: Arduous Destiny (Toronto: McClelland and Stewart, 1971), pp. 181-183.

18. Order-in-Council P.C. 1355, July 6, 1886.

19. Report of the Royal Commission on Railways, Canada, Sessional Papers, 1888, No. 8A, p. 11.

20. Ibid., p. 20.

21. Canada, House of Commons Debates, 1888, p. 73.

22. Ibid., pp. 1820-1822.

23. A.W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1959, first published in 1954), pp. 45-46.

24. This did not necessarily constitute discrimination. Technically, discrimination can be said to exist only when differences in prices are not a result of differences in costs. Even if a railway charged more to ship goods from Toronto to London than from London to Toronto this would not necessarily be discriminatory if the railway had to add cars for the trip to London, but had unused capacity on the return trip. Railways can practice discrimination because of the lack of competition. The complexity of the freight rate structure during this period made it relatively easy to hide the discrimination. This issue is discussed later in the chapter.

25. See A.W. Currie, *The Grand Trunk Railway of Canada* (Toronto: University of Toronto Press, 1957), pp. 336-341 and 385-390; and Gabriel Kolko, *Railroads and Regulation* (New York: W.W. Norton & Company Inc., 1970, first published in 1965), Chapters One to Four.

26. Statutes of Canada, *An Act to authorize a Subsidy for a Railway through the Crow's Nest Pass*, 1897, 60-61 Vic., c. 5. The Agreement went into effect in two stages in 1898 and 1899. A clause in the Agreement provided that the Company's rates "shall be first approved by the Governor in Council or by a Railway Commission, if and when such Commission is established by law."

27. Currie, *Economics of Canadian Transportation*, *op. cit.*, pp. 47-49.

28. Statutes of Manitoba, 1901, 1 Edw. VII, c. 38.

29. *Reports upon Railway Commissions, Railway Rate Grievances, and Regulative Legislation*, Canada, *Sessional Papers*, 1902, No. 20A. As the title suggests, McLean prepared two Reports, one in 1899, the other in 1902. They are included together in the *Sessional Papers* and the pages are numbered consecutively. A previous Commission had been appointed on November 26, 1894 by Order-in-Council P.C. 3463. Its *Report* in Canada, *Sessional Papers*, 1895, No. 39 was much less critical of the railways.

30. *Ibid.*, pp. 58 and 46.

31. *Ibid.*, p. 4.

32. *Ibid.*, p. 5.

33. *Ibid.*, p. 75.

34. *Ibid.*, p. 37.

35. *Ibid.*, pp. 5-33.

36. *Ibid.*, p. 79.

37. Canada, *House of Commons Debates*, 1902, p. 2432.

38. Public Archives of Canada, *Laurier Papers*, Vol. 188, S. Hodge to Laurier, 1 March 1901 and E. Horsey to Laurier, 2 March 1901.

39. *Industrial Canada*, Vol. 3, No. 8, March 1903, p. 357.

40. Statutes of Canada, *The Railway Act*, 1903, 3 Edw. VII, c. 58. In the same year the government passed legislation to deal with labour disputes involving railway workers. Statutes of Canada, *The Railway Labour Disputes Act*, 1903, 3 Edw. VII, c. 55.

41. Canada, *House of Commons Debates*, 1903, p. 247.

42. Compare the comment of Richard Olney, Attorney General of the United States under President Cleveland, on the Interstate Commerce Commission (circa 1893):

> The Commission, as its functions have now been limited by the courts, is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of railroads, at the same time that the supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things. It thus becomes a sort of barrier between the railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests.

Quoted by James O. Freedman, Crisis and Legitimacy: The Administrative Process and American Government (Cambridge: Cambridge University Press, 1978), p. 59.

43. Public Archives of Canada, Laurier Papers, Vol. 287, T.G. Shaughnessy to Laurier, 23 October, 1903 and C. Hays to Laurier, 23 October 1903.

44. Canada, House of Commons Debates, 1903, pp. 14844-14845.

45. The Railway Act, 1903, ss. 3-7. The Board was not set up until 1904.

46. Ibid., s. 44. The relationship between regulatory agencies and the rest of government, and particularly the Cabinet, has been a controversial issue for many years. For a useful insight on current thinking, see H.N. Janisch, "Policy Making in Regulation: Towards a New Definition of the Status of Independent Regulatory Agencies in Canada," Osgoode Hall Law Journal, Vol. 17, No. 1, April 1979, pp. 46-106.

47. This was one of the criticisms that had been made by McLean.

48. Kolko, op. cit., p. 3. But see Edward A. Purcell Jr., "Ideas and Interests: Businessmen and the Interstate Commerce Act," Journal of American History, Vol. 54, No. 3, December 1967, pp. 561-578. A slightly older interpretation of the creation of the ICC can be found in Marver Bernstein, Regulating Business by Independent Commission (Princeton: Princeton University Press, 1955) pp. 21-35.

49. It was not so much that the Railway Committee was powerless, it just did not regulate rates. From October 1, 1900 to October 1, 1901 most of the submissions to the Railway Committee were from railway companies seeking approval of plans

or permission to build. Only one dealt with rates and it was submitted by a steamship company. Report of the Secretary of the Railway of the Privy Council, Canada, Sessional Papers, 1902, No. 20, pp. 317-323.

50. Public Archives of Canada, Laurier Papers, Vol. 328, C. Hays to Laurier, 14 July 1904.

51. Ibid., Vol. 289, T.G. Shaughnessy to Laurier, 10 November 1903. The farming community was not as happy. See Ibid., Vol.229, J.L. Wilson to Laurier, 14 January 1904.

52. R.C. Brown and R. Cook, Canada 1896-1921: A Nation Transformed (Toronto: McClelland and Stewart Limited, 1978), p. 148.

53. R. Schultz, Federalism and the Regulatory Process (Montreal: The Institute for Research on Public Policy, 1979), p. 12.

54. Robert Borden, The National Transcontinental Railway Project, Public Archives of Canada, Pamphlet No. 2966, p. 52. Speeches delivered by Borden in 1903 and 1904 issued as a pamphlet.

55. The expression is from Reg Whitaker, "Images of the State in Canada," in Leo Panitch (ed.) The Canadian State: Political Economy and Political Power (Toronto: University of Toronto Press, 1977), p. 43.

56. W.T. Jackman, Economics of Transportation (Toronto: University of Toronto Press, 1926), p. 39.

57. Ibid., p. 30.

58. Statutes of Canada, An Act to amend the Railway Act, 1903, 1906, 6 Edw. VII, c. 42. Generally, on the activities of

the Board and its successor see Arthur R. Wright, "An Examination of the Role of the Board of Transport Commissioners for Canada as a Regulatory Tribunal," Canadian Public Administration, Vol. 6, No. 4, 1963, pp. 349-385.

59. Statutes of Canada, An Act to amend the Railway Act as respects the constitution of the Board of Railway Commissioners, 1908, 7-8 Edw. VII, c. 62.

60. See Currie, Economics of Canadian Transportation, op. cit., pp. 52-60; and Jackman, op. cit., pp. 230-235 for a discussion of the two rates cases discussed below.

61. The Railway Act, 1903, s. 252.

62. Ibid., s. 253.

63. Quoted by Currie, Economics of Canadian Transportation, op. cit., p. 53.

64. Quoted by Jackman, op. cit., p. 671.

65. Ibid., pp. 235-239.

66. Currie, Economics of Canadian Transportation, op. cit., pp. 63-70.

67. The Agreement was suspended in July 1918 and rates increased above the level specified in the Act. It was partially restored in 1922 and fully restored in 1924. Ibid., pp. 70-88.

68. The Royal Commission was appointed on June 14, 1916 by Order-in-Council 1680. *Report of the Royal Commission to inquire into railways and transportation in Canada*, Canada, *Sessional Papers*, 1917, No. 20G.

69. The process of forming Canadian National Railways took several years. The Canadian Northern was taken over in 1917 and the Grand Trunk Pacific, the subsidiary of the Grand Trunk that was created to build the western portion of the transcontinental, in 1919. The Grand Trunk was purchased in 1920. The Canadian National Railway Company was incorporated in 1919, Statutes of Canada, 1919, 9-10, Geo. V, c. 13, but did not begin unified operations until 1923. The Intercolonial, built following Confederation to link the Maritimes with central Canada, and the National Transcontinental, were already owned by the federal government. See Currie, *Economics of Canadian Transporation*, *op. cit.*, Chapter XVII.

70. J.A. Corry, *The Growth of Government Activities Since Confederation*, A study prepared for the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), has suggested that government regulation contributed to government ownership (p. 126):

> Public regulation was inevitable and it was bound to be used to promote the public interest even at the expense of the railways. The public interest demanded cheap transportation which is scarcely economically feasible in Canada. Vital industries which cease to pay are not abandoned; they become a public service.

71. It was appointed on October 7, 1899 by Order-in-Council P.C. 2181. The *Report* was tabled in the House of Commons on April 4, 1900.

72. Statutes of Canada, *Manitoba Grain Act*, 1900, 63-64 Vic., c. 39. See Chapter Four for more details.

73. The Maritime Rights Movement is discussed at greater length in Chapter Two.

74. The Crow's Nest Pass rates were fully restored in 1924. In 1925, as a result of an amendment to the Railway Act, Statutes of Canada, 1925, 15-16 Geo. V, c. 52, the original Agreement was terminated and the Crow rates became statutory. In the following year they were extended to cover grain shipped to western ports.

75. In recent years, the Crow's Nest Pass rates (now usually referred to as the Crow rates) have been subject to considerable scrutiny. The Snavely Commission estimated that in 1977 the railways experienced a net loss of $175 million as a result of the rates. Statutory revenues covered about 32 percent of the costs, the government subsidy another 18 percent and the railways the remaining 50 percent. See David R. Harvey, Christmas Turkey or Prairie Vulture? An Economic Analysis of the Crow's Nest Pass Grain Rates (Montreal: The Institute for Research on Public Policy, 1980), pp. 2-3. Harvey analyzes the economic effects of the rates and offers some proposals for reform. See also John Lorne McDougall, "The Relative Level of Crow's Nest Grain Rates in 1899 and in 1965," Canadian Journal of Economics and Political Science, Vol. 32, No. 1, February 1966, pp. 46-54.

76. The generally accepted claim that the national policy discriminated against western Canada has been challenged recently by Kenneth H. Norrie, "The National Policy and Prairie Economic Discrimination, 1870-1930," in D. Akenson (ed.) Canadian Papers in Rural History (Gananoque: Langdale Press, 1978), pp. 13-32. A useful collection of articles on the national policy has been published in Journal of Canadian Studies, Vol. 14, No. 3, Fall 1979.

77. The Royal Commission on Maritime Claims was appointed on April 7, 1926 by Order-in-Council P.C. 505. The *Report* was printed in Canada, *Sessional Papers*, 1926-27, No. 9.

78. Canada, *House of Commons Debates*, 1926-27, pp. 1828-1838 and 1844-1848.

79. *Ibid.*, pp. 1881-1882.

80. Statutes of Canada, *Maritime Freight Rates Act*, 1927, 17 Geo. V, c. 44. The rates on freight to and from the United States and the rates on freight from points outside the Maritimes were not lowered. The government was responsible for making up the difference between the new rates and the old.

81. Mackenzie King, the Prime Minister, was fully aware of the political advantage to be gained by implementing the Royal Commission's recommendations.

> We must make every effort to get its recommendations fulfilled. I believe by so doing we can win the Maritime Provinces back. All I need to do is to stand firm on this report and count on getting back Maritime support to keep us strong in future years where we may lose a little in Quebec and elsewhere.

Quoted by H. Blair Neatby, *William Lyon Mackenzie King: The Lonely Heights, 1924-1932* (Toronto: University of Toronto Press, 1963), p. 222.

82. Canada, *House of Commons Debates*, 1903, pp. 3559-3560.

83. The Royal Commission to Inquire into Railways and Transportation was appointed on November 20, 1931 by Order-in-Council P.C. 2910. The *Report* was printed in Canada, *Sessional Papers*, 1932-33, No. 108.

84. Statutes of Canada, 1933, 23-24 Geo. V, c. 33.

85. Currie, Economics of Canadian Transportation, op. cit., p. 460.

86. Harold Innis, "Unused Capacity as a Factor in Canadian Economic History," in Essays in Canadian Economic History (Toronto: University of Toronto Press, 1956), p. 155.

87. Statutes of Canada, The Transport Act, 1938, 2 Geo. VI, c. 53.

88. Canada, Debates of the Senate, 1937, p. 44.

89. Ibid., p. 50.

90. Ibid., p. 205.

91. Canada, House of Commons Debates, 1938, p. 1554.

92. For the opposition of the provinces see Canada, Debates of the Senate, 1937, p. 183. Opposition to the regulation of grain and flour shipments can be found in the King Papers Public Archives of Canada, H. Gauer to King, 12 February 1938, pp. 213565-213570 and Moose Jaw Board of Trade to King, 29 March 1938 pp. 217862-217865. Gauer was the President of the Winnipeg Grain Exchange.

93. See F.H. Brown, "Canadian Lake Shipping," in H.A. Innis and A.F.W. Plumptre (eds.) The Canadian Economy and Its Problems (Toronto: Canadian Institute of International Affairs, 1934).

94. J.R. Baldwin, "The Evolution of Transportation Policy in Canada," Canadian Public Administration, Vol. 20, No. 4, Winter 1977, pp. 602-605.

95. Canada, House of Commons Debates, 1938, p. 1554. It is more likely that the effect of the Act was to disguise the burden.

96. This information was drawn from various biographical sources. A.G. Blair was both a former Cabinet Minister and a former provincial premier. Blair is included with the former federal politicians.

97. Currie, Economics of Canadian Transportation, op. cit., pp. 428-429 and 699. In 1928 Mackenzie King appointed T.C. Norris, the Manitoba Liberal leader and former premier, to the Board because he was unwilling to cooperate with Progressives. Neatby, op. cit., p. 252.

98. See C. Lloyd Brown-John, "Membership in Canadian Regulatory Agencies," Canadian Public Administration, Vol. 20, No. 3, Fall 1977; and C. Andrew and R. Pelletier, "The Regulators," in B. Doern (ed.) The Regulatory Process in Canada (Toronto: Macmillan of Canada, 1978).

99. Statutes of Canada, The Air Board Act, 1919, 9-10 Geo. V, c. 11.

100. In re Regulation and Control of Aeronautics in Canada, [1932] A.C. 54 (P.C.).

101. Statutes of Canada, The Inland Water Freight Rates Act, 1923,13-14 Geo. V, c. 49.

102. It was appointed on January 17, 1922 by Order-in-Council P.C. 118 and its Report was printed in Canada, Sessional Papers, 1923, No. 211.

103. The Inland Water Freight Rates Act, 1923, ss. 3-5.

104. Statutes of Canada, *An Act to amend the Canada Shipping Act*, 1923, 13-14 Geo. V, c. 36.

105. *The Transport Act*, 1938, s. 3.

106. Statutes of Canada, 1966-67, c. 69, s. 3.

107. *Ibid.*

108. *An Act to amend the National Transportation Act*, Bill C-33, 1976-77 (30th Parl. 2nd Sess.).

109. For a useful interpretation of transportation policy see Howard J. Darling, "Transport Policy in Canada: The Struggle of Ideologies versus Realities," in K.W. Studnicki-Gilbert (ed.) *Canadian Transport Policy* (Toronto: Macmillan of Canada, 1974).

Chapter 4

REGULATION IN A PERIOD OF GROWTH

In the period under study almost all areas of economic activity became subject to regulation. As a result, the amount of regulation increased tremendously. The usual constraints of time and space make it impossible to look at all the new regulatory initiatives; instead, three areas will be examined in detail. These areas are: agriculture with particular attention to the grain trade; health and safety; and the protection of wildlife and the environment. Some areas that are not going to be studied, such as the regulation of financial institutions, have been thoroughly examined by others;[1] other areas, such as the regulation of transportation, have been examined elsewhere in this study. This chapter only deals with regulation up to 1929, the next chapter will deal with the 1930s.

(1) Regulation of Agriculture

(i) Early Legislation

The regulation of the marketing of agricultural products has a long history. In 1689 an order was issued in New France regulating the size of a cord of wood.[2] In 1765 regulations were issued in Quebec to the effect that bundles of hay were to weigh fifteen pounds and root crops were to be sold by the bushel.[3] The first regulations were simply issued by decree. With the establishment of more sophisticated forms of government, regulations were introduced in legislation. In 1835 "An Act to establish a standard weight for the different kinds of grain and pulse [peas, beans] in this province" was passed by the government of Upper Canada. It was a short act of about one page in length stipulating that a bushel of wheat was to weigh sixty pounds, a bushel of rye fifty-six pounds, etc. No provisions were made for enforcement or for penalties for violating the Act.[4] Similar acts were passed by the other provinces.

There was a steady increase in this type of regulation in the years prior to Confederation. In 1873 the legislation was consolidated into a general act by the federal government.[5] In the following year it was repealed and replaced by The General Inspection Act.[6] It was an impressive piece of legislation, being over forty pages in length and containing almost one hundred sections. It provided for the inspection of flour and meal, grains, beef and pork, pot ashes and pearl ashes, pickled fish and fish oil, butter, and leather and hides. In some respects the detail of the act is surprising - it distinguished among nine different grades of flour. Provisions were made for the appointment of inspectors who were paid on a piece rate by the person submitting the article for inspection. For example, they received ten cents for inspecting and marking a barrel of mackerel and five cents for a barrel of herring. Although impressive in its detail, adherence to the Act was voluntary.[7] The value of government inspection and grading is that it allows the consumer to know what he/she is buying. It is a means of overcoming information limitations. However, if the inspection is voluntary, the seller is not likely to submit products for inspection unless it is in his interest to do so. This limits the effectiveness of voluntary legislation.

(ii) The Manitoba Grain Act and the Regulation of the Grain Trade

The Manitoba Grain Act[8] introduced a different type of regulation from that which was contained in the marketing legislation mentioned above. The General Inspection Act was not unique, it could have been passed in any developing country at any time during the nineteenth century. The Manitoba Grain Act was the product of a unique set of circumstances.

In the 1890s the western grain growers were very unhappy with the elevator companies and the railways. They charged that the grain elevators were controlled by a few companies who did not compete with one another but rather colluded in establishing their prices. It was further charged that the Canadian Pacific Railway strengthened their position by discouraging the loading of grain from loading platforms and flat warehouses. James Douglas, the member for East Assiniboia, introduced legislation in the House of Commons in 1898 and again in 1899 to deal with these problems.[9] The Laurier government responded with a Royal Commission to investigate the shipment and transportation of grain.[10] It has been suggested that the appointment of three Manitoba farmers to the Commission makes it apparent that it was appointed not to impartially weigh the facts but rather to perform "the well-recognizd safety-valve function so common to Royal Commissions and ... to educate the public and the Dominion Legislature on the necessity for a certain type of legislative enactment."[11]

The Commissioners found that more than half of the 447 elevators were owned by four companies who did not compete with one another in regard to the price offered the farmer for his grain. They further argued that the railways' refusal to accept grain directly from the farmers strengthened the position of the elevator companies.[12] The Manitoba Grain Act was the result of the Commission's recommendations. It provided for the establishment of a warehouse commissioner; the licencing of elevators, warehouses and commission merchants; the filing of maximum elevator rates; and the continued use of flat warehouses and loading platforms. Amendments were made in 1902 as a result of problems with the large crop of 1901 and again in 1903.[13] Like the original act, both of these sets of amendments were responses to the growers' demands.

Problems with the grain crop of 1901 also produced the Territorial Grain Growers' Association and the Manitoba Grain

Growers' Association.[14] The creation of these two organizations made the already powerful western farmers even more powerful. When another Royal Commission to investigate the grain trade was appointed in 1906 it even had a western farmer as its chairman.[15] The recommendations of this Commission were turned into amendments to the Manitoba Grain Act and the Grain Inspection Act.[16] (The Grain Inspection Act, passed in 1904, consisted of those sections of the General Inspection Act that dealt with grain.)

(iii) Government Ownership

The western grain growers were very successful in getting the regulatory legislation they wanted in the first decade of this century. By 1910, as a result of the Acts mentioned above there were regulations concerning the allocation of railway cars; the loading of grain; the licencing of elevator companies; and the grading, weighing and mixing of grain. As well, records had to be kept of the various transactions and a warehouse commissioner existed to enforce these regulations. However, the grain growers wanted more than regulation; they wanted government ownership of the elevators. This proposal called for federal ownership of terminal elevators and provincial ownership of local elevators.[17]

In the early years of this century, many Canadians, particularly in the west, considered public ownership to be an almost universal panacea. Although it is difficult to explain the great faith people had in public ownership it is possible to suggest some reasons for its popularity. Most of the demands for public ownership focused on utilities that were the result of new technologies - telephones and hydro-electric installations - and on utilities that were essential to the movement of grain - railways and elevators. In some cases the demand was a result of the belief that service would be expanded faster if a utility was taken out of the hands of private enterprise. There was also the recognition that some utilities were natural monopolies and public ownership was seen as a way of checking the evil effects of monopoly. Not only was it supported by those who wanted better service and cheaper rates, it was supported by urban reformers who wanted to be able to control where telephone companies put their poles and wires and how well street railway companies maintained city streets. It was assumed by many that public ownership would be a useful antidote to political corruption since utility companies were thought to be a source of political corruption.[18] At the very most, the public ownership movement represented only a mild kind of "milk and water socialism." The farmers who wanted the government to acquire grain elevators and the manufacturers who wanted the Ontario government to create Ontario Hydro would have been horrified at the thought of state-owned farms or factories. Public ownership was seen as a means of acquiring social control over certain, rather special economic activities. Government ownership rather than government regulation was seen as the answer since regulation had not yet demonstrated that it could do the job.

When Laurier toured the West in the summer of 1910 he was repeatedly met with three demands: assistance for the chilled meat industry; freer trade; and government ownership of the terminal elevators.[19] In 1911, and with an election imminent, the government introduced legislation authorizing it to construct, lease, or expropriate terminal elevators.[20] Before the bill was passed the election was called. Armed with its obvious good intentions on the elevator issue and with a new American trade agreement that substantially lowered tariffs, the Liberals gained seats from the Conservatives in the West in the general election of 1911. In Ontario, where their organization was decaying and the trade agreement a handicap, they were destroyed. On assuming office, the Conservatives under Robert Borden introduced a new grain bill.[21] It differed from the Liberal bill only in details. Although they were not entirely happy with the legislation as it was introduced, the Western producers managed to get it altered to their liking.[22]

The Canada Grain Act, 1912, was a consolidation of the Manitoba Grain Act and the Grain Inspection Act. The two important innovations were the creation of a Board of Grain Commissioners to replace the warehouse commissioner and the provisions for government construction or acquisition of terminal elevators. In the next four years the government built a terminal elevator at Port Arthur (now Thunder Bay), three interior elevators at Saskatoon, Moose Jaw and Calgary and a smaller elevator at Vancouver in response to the opening of the Panama Canal in 1914.

The Grain Growers' Associations also met with success pressing their demands for provincially-owned local elevators. In late 1909, on the eve of a provincial election, the Manitoba government announced that it had accepted "the principle laid down by the Grain Growers' Association of establishing a line of internal grain elevators as a public utility owned by the public and operated by the public."[23] The elevators were soon acquired and the President of the Manitoba Grain Growers' Association was appointed as chairman of the commission that operated the elevators. The experiment was a failure. In 1912 the government of Manitoba agreed to lease its 174 elevators to the Grain Growers' Grain Company. In Alberta and Saskatchewan the end result was much the same although the experiment with government ownership was avoided. In those provinces the government underwrote eighty-five per cent of the cost of setting up a system of farmer-owned elevators.[24]

(iv) Reducing Uncertainty

A great many variables determined what the grain grower got for his crop and how much of this he would get to keep. The yield, the grade, the price and the various costs - transportation, storage, commission fees and insurance, all affected the grower's net income. His yield was subject to factors beyond the grower's control, but beginning in the 1890s he gradually won a degree of control over the other sources of uncertainty. The termination of the Canadian Pacific Railway monopoly, the Crow's Nest Pass and the Manitoba Agreements and the creation of the Board of Railway Commissioners in 1903 lowered and regulated transportation costs.[25] The Manitoba Grain Act and government-assisted railway construction assured him of an adequate supply of cars to ship his grain. Government ownership of elevators, the co-operative elevators in Saskatchewan and Alberta, the Manitoba Grain Act, the Grain Inspection Act and the Canada Grain Act reduced the uncertainty with regard to storage, insurance and grading. The primary thrust of the producers' demands prior to 1914 was to reduce uncertainty in input markets (i.e., in the markets in which they bought services such as transportation).[26] They were largely successful; by 1914, as a result of the measures just mentioned, they were far less vulnerable than they had been two decades earlier.

Government regulation was responsible for only part of the reduction in vulnerability. Other types of government intervention were also important. Regulation was introduced because the producers wanted it. When they did not get all that they wanted initially, they maintained their political pressure until they obtained additional legislation. However, regulation was frequently only the producers' second choice. They would have preferred to store their grain in government-owned local elevators and ship it on government-owned railways to government-owned terminal elevators. The federal and provincial governments were less enthusiastic about government ownership. They preferred to regulate or to subsidize the construction of railways and grain elevators. The generous assistance given to the farmers' elevator companies in Saskatchewan and Alberta is indicative of the lengths to which they would go to avoid government ownership.

(v) The Marketing of Grain

The combination of regulation, government ownership and subsidies went a long way towards controlling producers' cost (or at least reducing their variability). Government intervention did relatively little to raise the price of grain. The formation of the Grain Growers' Grain Company in 1906 was partially an attempt to bring that variable under control by offering the producers an alternative to the private grain companies. However, the company never handled enough of the crop to influence the price.[27] From 1900 to 1913 the price of wheat remained relatively stable with a slight upward trend. For example, the wholesale price of a bushel of Number One Northern at Fort William (now Thunder Bay) ranged from 75¢ cents in 1901 to 89¢ cents in 1913 with a low of 75¢ cents in 1902 and a high of $1.10 in 1908. With the beginning of the First World War prices increased, at first slowly and then dramatically. In 1914 prices rose to $1.32; in 1915 they fell; and then in 1916 they shot up to over $2.00.[28] The rapid increase was a result of poor yields in Canada and the United States combined with increased demand and reduced supply from other international sources.

In the early stages of the war wheat was traded through the normal channels. This worked reasonably well for the 1914/15 and the 1915/16 crops, but then in 1916 yields declined. To compound the problem the Canadian crop suffered from rust. At the same time, the Germans stepped up their campaign of submarine warfare. Futures on the Winnipeg market increased in price from $1.90 in February of 1917 to over $3.00 in early May when futures trading was suspended.[29] A month later an Order-in-Council established a Board of Grain Supervisors with the power to fix prices, receive offers of purchase and order railway companies to provide transportation facilities.[30]

The Board handled the rest of the 1916 crop and the 1917/18 and 1918/19 wheat crops. It did not control the other food or feed grains. In 1919 the government had to decide whether to continue regulating the marketing of wheat or allow the return of the open market. The farmers, the banks and the millers all favoured some form of control. Sir Thomas White, the federal Minister of Finance, favoured a return to the open market and his recommendation was followed. When it became apparent that this had been a mistake the Canadian Wheat Board was created by Order-in-Council in 1919. A year later the Canadian Wheat Board Act[31] was passed which allowed the Board to continue operating until August 1921. The act proved unnecessary for the federal government decided to return the marketing of the 1920/21 crop to normal channels despite the opposition of the Canadian Council of Agriculture.[32]

The post-war decline in prices intensified producer demands for a return of the Wheat Board. The wholesale price of Number One Northern dropped from $2.17 for the 1919/20 crop to $1.99 for the 1920/21 crop to $1.30 for the 1921/22 crop.[33] The obvious conclusion was drawn: the return to the open market was responsible for the drop in prices. Throughout the 1920s producers unsuccessfully lobbied for the return of a government marketing agency as an alternative to the futures market of the Winnipeg Grain Exchange. The federal government responded to the agitation in two ways: it passed the Canadian Wheat Board Act[34] of 1922; and it appointed a Royal Commission to inquire into the handling and marketing of grain.[35] However, the 1922 act never became operative. The 1922 Commission, unlike the pre-war commissions, contained no farmers. Its report generally defended the Winnipeg exchange and supported futures speculation.[36] The Western Canadian producers' failure to win the reinstatement of the Wheat Board was one of their two major defeats. The other was their inability to convince Ottawa to significantly lower tariffs. Together these two issues were responsible for much of the discontent of the early 1920s. The other major source of discontent was dealt with by the restoration of the Crow's Nest Pass rates in 1924.[37]

When it became apparent that the Wheat Board was not going to be re-established, the Western growers began to set up their own wheat pools. In 1923-24 a pool was organized in each of the prairie provinces and in the latter year the Central Selling Agency was created to market the wheat. According to the growers' contract with the pools, they were established, "for the purpose of promoting, fostering and encouraging the business of growing and marketing wheat co-operatively and for eliminating speculation in wheat and for stabilizing the wheat market."[38] In terms of the response of the producers to the scheme, it was a success. Between 1925 and 1930 the Agency handled slightly more than half of all western wheat.[39] The pools shifted attention away from the Wheat Board. Instead, demands grew for compulsory participation in the pools. The pools were a success by most standards, but they failed to achieve the ultimate goal of raising prices. The only way that this could be achieved was if all wheat was sold through one central agency. If the government would not bring back the Wheat Board then the Central Selling Agency with compulsory pooling was the next best thing.

(vi) Tilting at Windmills or The Market System Preserved

The decade of the 1920s ended as it had begun with the growers still trying to achieve control over the marketing of wheat. In the fifteen years after 1914 the growers had been far less successful than they had been in the previous fifteen years in winning over the federal government to their point of view. The regulatory framework that controlled so many aspects of the grain trade was basically completed with the passage of the Canada Grain Act in 1912. The Board of Grain Supervisors and the Canadian Wheat Board were aberrations produced by the unusual circumstances of the war rather than as a result of pressure from the producers. The replacement of the open market by a government agency from 1917 to 1920 was a means of saving the market system from a set of circumstances with which it could not cope. The market was restored as soon as those unusual circumstances ceased to be relevant.

The success of the Western grain producers in getting the regulation they demanded prior to 1914 is all the more surprising since they were not as well-organized politically as they were in the 1920s. Yet the political motivation behind the passage of much of the pre-war legislation is too obvious to be missed. The Manitoba Grain Act was passed just before the general election of 1900; the Grain Inspection Act just prior to the 1904 election; amendments were made to these two acts before the 1908 election; and the Liberals tried to get legislation allowing the government to acquire or build terminal elevators passed before the 1911 election. The most that the 65 Progressive MPs could get out of the minority Liberal government after the 1921 election was the restoration of the Crow's Nest Pass rates and a watered down Canadian Wheat Board which never went into operation.[40] Perhaps the explanation for this anomoly lies in the goals that were being pursued. In demanding the regulation of elevator companies, rail transportation costs, the allocation of cars, etc., the growers were only attacking the corners of the market system. Furthermore, grain elevators, like railways, could be seen as a quasi-public utility.[41] Many people agreed that it was acceptable for the government to regulate, or in exceptional cases, to own utilities. In demanding the replacement of the Winnipeg Grain Exchange and the private grain companies by a government agency the growers were threatening the heart of the market system. In a period of prosperity when the market system seemed to be operating successfully such an attack was almost inevitably doomed to failure.

(vii) Regulation, Assistance, and the Dairy Industry

The grain trade was the most important area of federal regulation, but many other agricultural activities also became subject to regulation. In the period after Confederation, the earliest legislation, such as that contained in The General Inspection Act, was concerned with establishing standards and grades for a variety of natural products. Slightly later, the federal government became more actively involved in assisting farmers in improving the quality and quantity of their products. The government's agricultural policy fit into the general mold of the national policy. It was explicitly developmental. It was based on the attempt to make two bigger blades of grass grow where only one had grown before. For example, after the experimental farm at Ottawa was established, under the authority of the Experimental Farm Station Act of 1886,[42] it immediately began to conduct experiments in an attempt to find a type of wheat that would mature earlier and thereby make it easier to develop the West.[43] In the same vein, a Dominion Dairy Commissioner was appointed in 1890, on the advice of the Canadian Dairymen's Association, to assist the dairy industry.[44]

The appointment of a the Dairy Commissioner was indicative of the importance of the dairy industry in the late nineteenth century. It was particularly important in central Canada where, throughout much of the region, dairy farming replaced the growing of wheat as the dominant activity. This transformation coincided with the introduction of factory production of cheese and butter in the 1860s and 1870s respectively. A large proportion of the butter and cheese went into the export trade which became a significant business in the last years of the nineteenth century. This was not achieved without the federal government's help. The government's role in the export trade consisted of providing financial and technical assistance to increase output and improve quality and regulating to insure that certain standards of quality were maintained.[45] The assistance took many forms. The Dominion Dairy Branch operated educational creameries and cheese factories to help improve the quality and uniformity of dairy products. In 1896 the federal government began giving small subsidies to creameries that built cold-storage rooms. In 1900 federal government inspectors began to supervise the loading and unloading of refrigerated products from steamers which had refrigerated compartments built partly with public money.[46]

Regulation was used to define and maintain quality standards, in part to protect the international reputation of Canada's products. In 1893 the Dairy Products Act[47] was passed to prevent the manufacture of imitation cheese and to control the labelling of cheese. Unless one reads the discussion in the House of Commons that preceded the passage of the Act, one could easily assume that it was passed to protect the Canadian consumer. In fact, like much other regulation which was to come, it was passed to protect Canadian producers. The need for such legislation was brought to the attention of the House by a backbencher who claimed that inferior American cheese was being brought into the country and exported as a Canadian product injuring the reputation and good name of Canadian cheese.[48] Another member expressed the same concern and read a letter from the Gananoque Board of Trade asking that action be taken.[49] The Act made it necessary to mark any cheese made in Canada and destined for export as Canadian and it prohibited such labelling of any cheese not made in Canada.

The combination of assistance and regulation helped boost exports of cheese and butter.[50] The assistance given to improve quality and encourage refrigeration was particularly useful in increasing exports of butter. The amount exported (in pounds) increased more than fifteen-fold between 1889 and 1903. In 1903, the peak year, more than 34 million pounds were exported. Exports of cheese peaked in 1904 at 234 million pounds after doubling in the 1880s and again in the 1890s.[51] For a brief period in the 1890s the value of dairy products exported exceeded the value of exports of grain and grain products. Exports declined after 1903-1904 because of the increased domestic demand.

Domestic demand increased because of the rapid increase in population and the growth of urban centres. At the same time, improvements in technology made it easier to ship fluid milk to the growing cities limiting the amount of milk available for the manufacture of butter and cheese. The federal government also played a part in increasing domestic demand for dairy products by prohibiting the manufacture and sale of margarine, or oleomargarine as it was then called.[52] The necessary legislation was passed in 1886, about a decade after the product was introduced to North America. Most of the members of the House who supported the legislation admitted that the purpose of the prohibition was to protect the dairy industry although some argued that it was necessary to protect consumers from a product that was often made from diseased animals.[53] One member claimed that, "there can be no doubt whatever that many diseases are the result of the consumption of oleomargarine."[54] The argument was put forward by one member that it should be left to consumers to determine the fate of margarine:

> But if these articles are stamped so that the public know what they are buying, and if the oleomargarine or the butterine are composed of materials which are not injurious to the health of the consumer, I do not see why the production of these articles should be forbidden in this country, and if it does work any inconvenience to the dairymen of the country, their true remedy would be to manufacture a still better article of butter. Let the dairymen of the country see to it that they make the very best butter possible, and no butterine or oleomargarine can compete with that article.[55]

In the next few years more legislation was passed regulating various aspects of the dairy industry: The Butter Act in 1903,[56] The Milk Test Act in 1910,[57] and the Dairy Industry Act in 1914.[58] The 1914 Act continued the prohibition of the manufacture, importation and sale of margarine. In 1921, following requests from the Eastern and Western Ontario Dairymen's Associations and the National Dairy Council for federal grading of dairy products bound for export, The Dairy Produce Act was passed.[59] The government obviously considered this to be an important piece of legislation. It was given Second reading and passed, despite opposition protests, on the last day of the session preceding the 1921 election. In the same session the government backed down from its intention to permit the sale of margarine.[60]

It is apparent that much of the agricultural regulation was not regulation constraining the behaviour of the agricultural community, but regulation for the benefit of the agricultural community.[61] In actuality, it was the elevator companies, railways, private grain companies and consumers and merchants (who were not allowed to buy or sell margarine) that were being regulated. It is certainly possible to argue that other members of the public benefited from this regulation. Undoubtedly the quality of agricultural products was somewhat higher as a result and it is no doubt equally true that the public benefitted from the presence of a prosperous farming community. In the same manner, one could argue, and the manufacturers certainly did, that the farmers and the rest of the general public benefitted from the high tariffs introduced in the National Policy of 1879. Ultimately, Canadian agricultural policy, like the high tariffs and the assistance to the railways, was part of the national policy of encouraging development and maintaining or creating a national identity for Canada vis-à-vis its large powerful southern neighbour.

(2) Health and Safety Regulation

(i) Early Legislation

The earliest health and safety regulations protected the public from only the most obvious dangers. Federal legislation passed in 1874 made it an offence to sell adulterated liquor, food or drink. They were defined as "all articles of food or drink with which there has been mixed any deleterious ingredient, or any material or ingredient of less value than is understood or implied by the name under which the article is offered for sale."[62] The last part of the definition suggests that the legislation was designed to prevent fraud as well as protect the public's health. This emphasis on the prevention of fraud was a way of justifying federal intervention by implying that the offence was a matter of criminal law.

The act provided for the appointment of "persons possessing competent medical, chemical and microscopical knowledge," to act as analysts of food, drink and drugs.[63] Four analysts were appointed in 1876. They discovered that adulteration was common: 34 out of 58 samples of milk analyzed were found to be adulterated, 9 out of 10 samples of coffee; and 17 out of 19 samples of pepper. In their first year they found that slightly more than half of all samples tested were adulterated.[64] However, no prosecutions were undertaken because of doubts about the analysts' qualifications and weaknesses in the legislation.

The need to correct these weaknesses was an important reason for the passage of The Adulteration of Food Act in 1884.[65] (The previous legislation had been an amendment to the Inland Revenue Act.) According to John Costigan, the Minister responsible for the new Act, some of its clauses were taken from a New York State law.[66] The Liberal opposition objected to the legislation on the grounds that it interfered with the provinces legislative powers. They argued that it regulated property and civil rights, a subject of provincial jurisdiction:

> If the Government have power to legislate on this subject, they have the power to regulate market fees, to make police regulations for the sale of the ordinary articles brought into market, to regulate the sale of goods on the shelves of every shop, to deal with all those matters, as matters of bargain and sale, which have been recognized heretofor as subjects for police or municipal regulations.[67]

The force of their argument was weakened by the fact that they had passed the 1874 act. The Conservatives were equally convinced they were regulating trade and commerce, a subject of federal jurisdiction and they passed the legislation.[68] The Act contained a section that was becoming a part of all regulatory statutes, "The Governor in Council may, from time to time, make such regulations as to him seem necessary for carrying the provisions of this Act into effect."[69] It was this provision that allowed the government to pass Orders-in-Council defining standards for foods. Except for one standard issued in 1894, the first standards were issued in 1910. In the next few years standards were issued for foods such as lime juice, baking powder, and edible vegetable oils. As well, regulations were passed to limit the use of arsenic and control the labelling of food products.[70] The Act was administered by the Department of Inland Revenue until 1918, then the Department of Trade and Commerce was given responsibility, and in 1919 the new Department of Health took over.[71] In 1920 the Act was replaced with The Food and Drugs Act[72] which remains in force in an amended form today.

The history of The Food and Drugs Act is straight forward and not too interesting. The legislation dealing with adulteration became more detailed over time as the range of available foods and drugs increased in number and complexity and as the technology to analyze them was developed. The legislation prohibiting adulteration simply evolved along with Canadian society.

(ii) The Meat and Canned Foods Act

The history of the Meat and Canned Foods Act[73] is far more interesting. Gabriel Kolko has argued that in the United States the large packers sought federal meat inspection in order to protect their export markets and to ensure that small packers would not be left uninspected.[74] Somewhat similar considerations produced the federal Meat and Canned Foods Act in Canada. First, however, a little background is necessary to show how the American and Canadian situations differed.

When the United States was starting to ship meat to Great Britain, Canada was still shipping live cattle. The American packing industry was larger, more advanced and it had greater access to refrigerated ships. The United States still continued to export livestock even after it had started shipping meat. Thus, when a bill was introduced in the British Parliament in 1878 limiting the importation of foreign cattle on the grounds they might be diseased, Canadian and American shippers were understandably disturbed. After considerable lobbying they managed to have Canadian and American cattle excluded from the provisions of the act. A month after it went into effect a shipment of American cattle entering Britain was found to be diseased with the result that American cattle were made subject to the act. As a result, Canadian officials moved to prohibit the importation of American cattle into eastern Canada and a new quarantine act was passed.[75] Both of these measures were designed to protect the reputation of Canadian cattle in Britain.[76] They seem to have been a success. Exports to Britain increased from 32,680 cattle in 1880 to over 100,000 annually by 1891 and to over 150,000 annually by 1900.[77] While cattle were exported to Britain live, pigs were slaughtered in Canada and exported in the form of bacon and hams. Exports increased rapidly from a value of less than $1 million in 1890 to over $12 million in 1906.[78]

In 1906, Upton Sinclair's The Jungle, a "muckraking" account of the Chicago packing industry, received widespread attention. Although Sinclair was primarily interested in the plight of the workers, his description of what went on in the packing houses raised doubts throughout the United States and Europe about the quality of meat that was coming out of American slaughter-houses:

> There was never the least attention paid to what was cut up for sausage; there would come all the way back from Europe old sausage that had been rejected, and that was mouldy and white -- it would be dosed with borax and glycerine, and dumped into the hoppers, and made over again for home consumption. There would be meat that had tumbled out on the floor, in the dirt and sawdust, where the workers had tramped and spit uncounted billions of consumption germs. There would be meat stored in great piles in rooms; and the water from leaky roofs would drip over it, and thousands of rats would race about on it. It was too dark in these storage places to see well, but a man could run his hand over these piles of meat and sweep off handfuls of the dried dung of rats. These rats were nuisances, and the packers would put poisoned bread out for them; they would die, and then rats, bread and meat would go into the hoppers together.[79]

Sinclair's revelations were a mixed blessing for the Canadian industry. By implication they raised doubts about the quality of Canadian meat. At the same time, they presented it with the opportunity to capture part of the American export trade. The federal government was urged to act to protect the Canadian industry.[80] An inspector was appointed to investigate the situation in Canada and by December the Minister of Agriculture had legislation before the House. When introducing the bill he claimed that the investigation had shown that conditions were generally satisfactory although "there were some little delinquencies here and there."[81] There is little doubt that the intent of the legislation was to protect Canada's export trade.

First of all, Ottawa had generally abandoned the attempt to regulate internal trade under the umbrella of the trade and commerce provisions of the British North America Act. The bill only pertained to meat and canned foods destined for export and interprovincial markets and as such would only provide incidental protection for the Canadian consumer. Second, the federal Minister of Agriculture was explicit about the purpose of the legislation:

> In consequence of the revelations in the United States [i.e., The Jungle], a great deal of attention has been directed by European governments and peoples to the characters of the foods they are importing, not only from the United States, but from other parts of the world.... All this indicates that it is necessary for us to do all we possibly can to inspire the confidence of the markets of the old country in the articles which we export, for if we do not comply with the regulations in force in these markets we would be at a great disadvantage, especially in comparison with our greatest competitor the United States.[82]

The Meat and Canned Foods Act applied to canned, bottled and packaged goods and to meats. Meat packing houses involved in the export and interprovincial trade were to have permanent inspectors while factories that canned fruits, vegetables and fish were to be inspected periodically. During the debate on the bill surprisingly little concern was expressed for the Canadian consumer.[83] There was more concern about the harmful effects the dating of canned goods would have on merchants and canners. There was oppostion to the bill, some of it based on the fear that it gave too much power to the ministers. One Member stated: "I notice that the present government are very fond of introducing Bills which place very great power in the hands of the ministers, and I think parliament should call a halt in this matter".[84] One subject not discussed was who was going to pay for the cost of the inspection. In the United States there had been an attempt to make the meat packers bear the cost since they were the ones who were going to benefit.[85] In Canada, it was automatically assumed that the state would bear the cost. This is not surprising. Previously the government had assisted the livestock and meat exporting industries directly and now when circumstances required it, the government provided indirect assistance in the form of inspection.

(iii) The Cold Storage Act

The Meat and Canned Foods Act was not unique. One only has to look at the Cold Storage Act[86] introduced at the same time to dispel that belief. Like the previous act, it too was intended to help the food industry at the public's expense. The act permitted the government to provide 30 percent of the cost of cold storage warehouses to encourage trade in perishable goods. In explaining the rationale for the legislation the federal Minister of Agriculture stated that farmers somehow differed from other interest groups:

> Some people like to benefit the railroads and think thereby they are benefitting the whole community. Some like to benefit the canners and think they are benefitting the whole community. I think that to benefit the farmer is the most universal way of benefitting the whole community and in that sense this Bill is for the benefit of the farmer.[87]

In return for the assistance the government retained control over the rates charged by the operators of cold storage plants and had the right to inspect the warehouses and make regulations for their operation.

(iv) The Patent Medicine Act

The Laurier government did introduce some regulation to protect the health and safety of the Canadian consumer. When the Minister of Inland Revenue introduced legislation in 1908 to regulate patent medicines he argued that such a measure was generally recognized as necessary. Some of the provinces (Manitoba, British Columbia, Ontario and New Brunswick) had considered regulation, but their efforts were opposed by the manufacturers who felt that a federal act would be more appropriate. As well, a committee of the House had recommended that legislation be introduced after investigating the industry.[88] A previous bill had been introduced but it was not proceeded with because of the opposition of the manufacturers and retailers.[89] The bill introduced in 1908 was met with "the absolute approval" of the retailers and the approval of a majority of the manufacturers.[90] They approved of it for the reason that many businessmen preferred federal regulation to provincial regulation, for "if the Dominion does not legislate on the subject the provinces will, and so the manufacturers will not know where they are at...."[91] The act required that the manufacturers or importers of any patent or proprietory medicine had to register the medicine with the Minister, procure a certificate, and inform the Minister of the presence and quality of any of the drugs specified in a schedule maintained by the Minister.[92] The aim of the act was to prohibit the use of cocaine or excessive amounts of alcohol and to encourage manufacturers to print their formula on the bottle.[93]

(v) Regulating the Opium Trade?

In the same session an act was passed prohibiting the importation, manufacture and sale of opium except for medicinal purposes.[94] As regulation, the act is not particularly interesting, but the circumstances that produced it are worth noting. In 1907 Mackenzie King (at that time the Deputy Minister of Labour) was appointed to a Royal Commission to investigate and assess the losses suffered by the victims of anti-oriental riots in Vancouver. While doing so he discovered the opium trade. With his usual thoroughness, he even visited opium dens and purchased some opium. He then produced a report urging its suppression and drafted the necessary legislation.[95] The legislation was greeted with such acceptance that there was virtually no discussion at all in the House. The Senate, always friendly to businessmen of all kinds, amended the bill to give opium merchants six months to dispose of their stock, presumably by exporting it. The opium merchants had actually asked for a delay of eight years.[96]

An examination of the context in which the act was passed leads one to wonder whether it was intended merely to put an end to the use of a dangerous drug. The reason King went to Vancouver was to investigate anti-Oriental riots. While King was in Vancouver his Minister was in Japan trying to convince the Japanese government to limit emigration to Canada. He was successful. In addition, the government amended the Immigration Act in 1908 to make it more difficult for Hindu and Oriental immigrants to enter Canada. In 1908 anti-Oriental sentiment was widespread in British Columbia. In the rest of the country people were beginning to worry about how all the immigrants were going to be "Canadianized."[97] In the early twentieth century Canadians were not particularly sympathetic to cultural differences and if the Oriental immigrants were going to be turned into good Canadians, opium would have to go.

Compared to the regulation of transportation or agriculture, health and safety regulation did not receive much attention from the federal government. In part, the reason was constitutional; public health, for example, is an area of provincial jurisdiction. The provinces began establishing Boards of Health in the 1880s, the federal Department of Health was not created until 1919.[98] Occupational health and safety is another concern that falls primarily within provincial jurisdiction. In the early 1880s the federal government considered legislation to regulate working conditions in factories but decided not to go ahead with it. It was left to Ontario to pass Canada's first factory act in 1884.[99] One area where the federal government could legislate was in regard to working conditions on federal public works (e.g., canals and federally chartered railways). The Public Works (Health) Act[100] was passed in 1899 to ensure that workers on these projects had adequate accomodation, access to medical facilities, etc. With the exception of this Act and two or three others,[101] legislation that seemed to regulate health and safety was more concerned with protecting the economic health of export markets than with protecting the health of the public. This produced the curious situation in which the people of Canada paid inspectors to ensure that the people of Great Britain ate uncontaminated meat. However, the people of Great Britain were not necessarily the only ones who benefited. There were spill-over benefits for some Canadian consumers since the factories that became subject to inspection produced for the domestic market as well as the export market. There were also potential benefits for Canadian farmers and meat-packers. Depending on the elasticities of supply and demand, the British consumer may have purchased more Canadian meat and canned goods, possibly at higher prices.

(3) Environmental Protection

(i) The Issues

Environmental regulation is frequently at the centre of the contempory debate over regulation. Defenders of regulation point to it as a type of regulation that works: society as a whole benefits; its effects are immediate and obvious (cleaner air and water); and it places the costs where they belong (it internalizes externalities).[102] Furthermore, they argue, there is no choice - regulation to protect the environment is essential. Critics would take issue with all of these claims: often only a small section of society benefits; its effects are not obvious, in fact it creates its own side-effects such as a detrimental effect on technological innovation; and the costs are often enormous, contributing to inflation.[103] Some critics would not even concede that the setting of pollution standards is a necessary evil. The discharge of pollutants could be taxed or licensed. This would allow for greater flexibility and provide a greater incentive to reduce pollutants.[104]

Environmental regulation can be seen as an example of what Paul Weaver has recently called the "New Regulation." According to Weaver, the important characteristics of the New Regulation is that it is

> the social policy of the new class - that rapidly growing and increasingly influential part of the upper-middle class that feels itself to be in a more or less adversary posture vis-à-vis American society and that tends to make its vocation in the public and not-for-profit sectors.[105]

Weaver goes on to argue that, in disregarding the economic costs of the regulation it supports, "the new class, though it marches under the banner of consumerism, is in fact working against the widespread enjoyment of consumer goods and services that liberal capitalism makes possible".[106] In other words, the New Regulation undermines the very structure that makes American society function. The debate over environmental regulation has not been as heated in Canada as it has been in the United States; nevertheless, it is a type of regulation which receives considerable attention and it is therefore worth looking at its origins.

(ii) Canada's First National Park

Given the way in which it was developed, it was appropriate that Canada's first national park was established as a result of the discovery in 1885 of mineral hot springs by Canadian Pacific railway workers.[107] Later in the same year the federal government reserved the ten square miles around the springs from settlement or sale.[108] This was only a temporary measure. In the 1880s the idea that unsettled wilderness areas had certain intrinsic values was almost unknown. Although

John Muir, the American naturalist and explorer, was writing articles in the 1880s on the need to conserve the wilderness, he met with little success until the creation of Yosemite National Park in 1890. A more common idea of the value of wilderness areas was expressed to a Winnipeg audience by John A. Macdonald after he had travelled across the country on the recently completed Canadian Pacific:

> There may be monotony of mountains as there is of prairies, but in our mountain scenery there is no monotony.... You plunge into another valley, and there come the Selkirks, of unsurpassed beauty and grandeur of magnificent and almost eccentric changes. You plunge into the valley of the Fraser and the magnificent canyons. The mountains are rich in gold, and silver and all descriptions of minerals, and clothed with some of the finest timber, an inexhaustible means of supplying the treeless expanse of prairies in the Northwest.[109]

The minerals and timber were just lying there waiting to be developed. So too were the hot mineral springs at Banff.

In 1887 legislation was introduced that increased the size of the reservation to 260 square miles and officially created Canada's first national park.[110] In doing so, the government made it clear that it was not protecting the area from development, but that it was setting it aside for government-sponsored development. In defending his Government's action, Prime Minister Macdonald explained:

> the Government thought it was of great importance that all the country should be brought at once into usefulness, that people should be encouraged to come there, that hotels should be built, that bath-houses should be erected for sanitary purposes....[111]

He had no doubt that venture would be profitable:

> Then there will be the rental of the waters; that is a perennial source of revenue, and if

> carefully managed it will more than many times recuperate or recoup the Government for any present expenditures.[112]

One member did point out that the plan to develop the area seemed incompatible with the protection of wildlife but this concern was not widely shared.[113] More members were concerned that the government had spent money without parliamentary approval.[114] As R.C. Brown has pointed out, the Government's policy was in no sense inconsistent;

> but rather a continuation of the general resource policy that grew out of the National Policy of the Macdonald Government. Underlying parks policy was the assumption of the existence of plentiful natural resources within the reserves capable of exploitation and the principle of shared responsibility of government and private enterprise in the development of those resources.[115]

(iii) A Shift in Policy

Over the next several years this explicitly developmental approach, or as Brown calls it, the "doctrine of usefulness", was supplemented by an approach that saw the preservation of wildlife and wilderness as an end in itself. However, this shift in policy did not take place immediately and the older approach did not completely disappear. In 1894 when the Unorganized Territories Game Preservation Act[116] was passed, as a result of the urgings of the Royal North-West Mounted Police, the doctrine of usefulness was still operative. According to Mackenzie Bowell, the Government Leader in the Senate:

> The object of the Act has been to assist the native people who would in the event of the extermination of the animals, either starve to death or make their way out to the settled parts and become wards of the country.[117]

The game in the Northwest was to be protected because of its usefulness. It was a means of preventing Canada's native people from becoming burdens to the nation's more recent immigrants.

After 1900 the shift in policy became more noticeable as people began to realize that natural resources were not inexhaustible. Such things as the disappearance of the passenger pigeon and the destruction of millions of acres of forest helped bring about this awareness. One manifestation of this awareness was the Commission of Conservation, an advisory body created in 1900 on the recommendation of the North American Conservation Conference which had been called by Theodore Roosevelt who became President the following year.[118] Another was a change in attitude towards the utilization of natural resources. No one suggested an end to development; instead, people began to talk in terms of "managed development." In 1909 Robert Borden explained how conservation and development could be reconciled:

> Conservation does not mean non-use, on the contrary, it is consistent with that reasonable use of these great resources which is absolutely necessary for their development. And, on the other hand, development does not imply destruction or waste.[119]

The Dominion Forest Reserves and Parks Act[120] of 1911 continued the shift in policy. It created a Commissioner of Dominion Parks separating the administration of the national parks, there were now five, from that of the larger forest reserves. In part, this was a recognition of the incompatibility of recreation and preservation. During the debate on the legislation two new government attitudes were revealed: control over commercial development and a concern for the protection of wildlife:

> Implicit in the discussions was the recognition that the government was going to take a much firmer hand with regard to commercial activities and resource development within the parks.... The government also demonstrated a new and surprising concern for wildlife protection in the Rocky Mountains Forest Reserve.[121]

(iv) The Protection of Wildlife

The protection of wildlife did not begin with the Rocky Mountains Park Act. In 1762 General Gage, the Military Governor of Quebec, declared a closed season on partridge. In 1839 a law was passed in Upper Canada establishing closed seasons for a number of game birds.[122] The fact that it was game birds that were being protected clearly suggests that the closed seasons were designed to protect the birds so that there would be enough for the elite to shoot. The provisions for the protection of wildlife in the Rocky Mountains Park Act were secondary to the development of the park.

It was not until after 1900 that the idea of preservation as an end in itself developed. It was the development of this idea that made possible the Migratory Birds Convention Act[123] of 1917. Events in the United States also played an important role. Pressure for protective legislation emerged earlier in the United States than it did in Canada and in 1900 it produced an act banning the interstate transportation of birds and wild game.[124] It was not a success. In 1911 the American Game Protection and Propagation Society was formed to press for the protection of migratory birds. Two years later another act was passed, but it too proved inadequate.[125] Part of the problem was constitutional. The United States federal government did not have the power to pass adequate legislation. To get around the problem, Elihu Root, a prominent American Senator, suggested that the United States and Great Britain, on Canada's behalf, sign a treaty for the protection of birds. When the United States submitted a draft treaty in 1914 Canadian officials were well prepared. People in the Canadian Departments of the Interior and Agriculture and with the Geological Survey had been giving the problem considerable attention. As well, some powerful Canadians who were members of the North American Game Protective Association favoured the idea.

With this kind of support the success of the treaty was assured. It was signed in 1916, the Migratory Birds Convention Act was passed a year later and in 1918 the necessary American legislation was passed. The Canadian legislation was brief. It gave the Governor in Council authority to make regulations to meet the general goals of the 1916 Convention. It contained provisions about the appointment of game officers and the punishment for violations. Although the Act was a considerable advance over previous wildlife protection, the doctrine of usefulness was not completely absent. The act specifically referred to migratory insectivorous (insect-eating) birds and one argument that had been used to support protection was that certain birds needed to be protected because they eat insects harmful to crops.[126]

In the same year, The Northwest Game Act[127] was passed replacing the 1894 legislation mentioned above. It limited hunting and trapping in the Northwest to certain times of the year and it gave the Governor in Council authority to make regulations regarding the types of weapons which could be used, the issuing of licenses, the appointment of game wardens, etc. In the next two years Point Pelee National Park was created as a bird sanctuary and some islands in the Gulf of St. Lawrence were set aside for the same purpose.[128]

It is possible to identify three influences which shaped Canada's first environmental regulations: the doctrine of usefulness; the American experience; and the existence of a small number of individuals strongly committed to conservation. The doctrine of usefulness was simply an extension of the national policy. It inhibited the emergence of the conservation for its own sake approach and ensured the triumph of the controlled exploitation approach. This meant that the conservation movement was the most successful when the resource being protected was of limited value. Events in the United States were of major importance. Specifically, the decision to develop the area around Banff and the regulations governing its development were influenced by the example of the Arkansas Hot Springs Reserve.[129] Federal protection of migratory birds would never have come about as it did without the American need for a treaty. More generally, the earlier emergence of a conservationist ethos in the United States contributed to the emergence of a similar sentiment in Canada. However, conservationism in Canada was more muted. It is possible to suggest two reasons for this. Whatever trauma was associated with the disappearance of the American frontier in 1891 was not present in Canada. Unsettled wilderness was still plentiful in Canada in the early twentieth century. The fact that much of this land remained in the hands of the state was a second factor. H.V. Nelles has suggested that "The absence of the ownership issue emasculated the Canadian conservation movement - the Canadian forests were already publicly owned - and reduced it to a prodding and not particularly effective conscience."[130] Foster thinks that the conservation movement was more successful and attributes this to the "foresight of a small group of remarkably dedicated civil servants who were able to turn their own goals into a declared government policy."[131] Although she may be underestimating the importance of other factors, this claim has merit. The introduction of environmental regulation, like the introduction of other types of regulation, depended on the existence of experts who could provide the knowledge needed to frame the legislation and the expertise needed to enforce the regulations.

(4) Conclusion

In Canada there is nothing comparable to the creation of the Interstate Commerce Commission in 1887 that can be used to date the beginning of modern regulation. The best that one can do is suggest that 1900 represents a turning point. The regulation of the nineteenth century was closer in spirit to the mercantilist regulation of Tudor England or New France than it was to the type of regulation represented by the Canadian Radio-television and Telecommunications Commission. The goals of regulation were relatively simple and straightforward: to prevent blatant and harmful fraud in the marketing of food and drink; to ensure that businesses such as banks and insurance companies were sufficiently capitalized; to provide assistance to the dairy industry; and to specify standards for weights and measures. Enforcement was usually left to the courts which meant that much of the regulatory legislation of the nineteenth century did not give consumers significantly more protection than that provided by the common law. Control over the railways, the most contentious regulatory issue in the latter part of the century, was left in the hands of politicians. In 1888 a conscious decision was made not to create a statutory regulatory agency staffed by professional public servants to regulate the railways.

After 1900 the way in which regulation was employed began to change. The most noticeable change was the dramatic increase in the amount of regulatory legislation. In the period prior to World War I, the following Acts were passed:

Manitoba Grain Act, 1900
The Butter Act, 1903
Railway Act, 1903
Grain Inspection Act, 1904
Electricity and Fluid Exportation Act, 1907
Industrial Disputes Investigation Act, 1907
Meat and Canned Foods Act, 1907
Patent Medicine Act, 1908
Cold Storage Act, 1908
The Milk Test Act, 1910
Combines Investigation Act, 1910
Canada Grain Act, 1912
The White Phosphorus Matches Act, 1914
Dairy Industry Act, 1914
The Loan Companies Act, 1914
The Trust Companies Act, 1914.[132]

As a result of these Acts the federal government assumed new responsibilities, such as registering patent medicines, inspecting meat-packing plants, mediating labour disputes and ensuring that railway cars were allocated properly. In order to meet these responsibilities, federal departments were enlarged, inspectors were appointed and regulatory agencies such as the Board of Railway Commissioners and the Board of Grain Commissioners were created. These administrative changes were significant because now there were officials with specialized knowledge who could deal with more complex and more technical regulatory issues, for example, unjust discrimination in freight rates. Equally important, these officials were given the authority to enforce regulation. More than the simple increase in the amount of regulation, it was these changes that marked the emergence of the modern regulatory state.

NOTES

1. On the regulation of financial institutions see E.P. Neufeld, The Financial System of Canada: Its Growth and Development (Toronto: Macmillan of Canada, 1972); and Linda M. Grayson, "The Formation of the Bank of Canada, 1913-1938" (Unpublished Ph.D. Thesis, University of Toronto, 1974). Nor will the burst of regulatory activity that occurred in the 1917-1920 period be examined. It was a product of the abnormal conditions produced by the war and all of the agencies were dismantled when conditions returned to normal. For an account of this activity see Tom Traves, The State and Enterprise: Canadian Manufacturers and the Federal Government, 1917-1931 (Toronto and Buffalo: University of Toronto Press, 1979); and J.A. Corry, "The Growth of Government Activities in Canada, 1914-1921," Canadian Historical Association Report, 1940.

2. H.A. Innis (ed.) Select Documents in Canadian Economic History, 1497-1783 (Toronto: University of Toronto Press, 1929) pp. 313-314.

3. Ibid., p. 549.

4. Statutes of Upper Canada, 1835, 5 Wm. IV, c. VII.

5. Statutes of Canada, An Act to amend and consolidate, and to extend to the whole Dominion of Canada, the Laws respecting the Inspection of certain staple articles of Canadian Produce, 1873, 36 Vic., c. 49. In the same year The Weights and Measures Act was passed (c. 47).

6. Statutes of Canada, The General Inspection Act, 1874, 37-38 Vic., c. 45.

7. Ibid., s. 19, "Nothing in this Act shall oblige any person to cause any article to be inspected unless such inspection is expressly declared to be compulsory...."

8. Statutes of Canada, Manitoba Grain Act, 1900, 63-64 Vic., c. 39. This Act is also discussed in Chapter Three in connection with the regulation of transportation.

9. In 1898 Douglas introduced Bill No. 19 to regulate the transit of grain in Manitoba and the Northwest Territories, Canada, House of Commons Debates, 1898, p. 450. A year later he introduced Bill No. 15 to regulate the trade in grain in Manitoba and the Northwest Territories, Canada, House of Commons Debates, 1899, p. 618.

10. The Royal Commission on the Shipment and Transportation of Grain was appointed on October 7, 1899 by Order-in-Council P.C. 2181. Its Report was tabled in the House of Commons on April 4, 1900. Five more Royal Commissions on various aspects of the grain trade followed in 1906, 1921, 1923, 1931 and 1936. The Royal Commission appointed in 1921 never completed its enquiry.

11. Vernon C. Fowke, The National Policy and the Wheat Economy (Toronto: University of Toronto Press, 1973, first published in 1957) p. 156.

12. Report of the Royal Commission on Shipment and Transportation of Grain, 1900, Canada, Sessional Papers, No. 81a, 1900. See also Fowke, op. cit., pp. 117-118 and pp. 156-157.

13. Statutes of Canada, An Act to amend the Manitoba Grain Act, 1900, 1902, 2 Edw. VII, c. 19; An Act to amend the Manitoba Grain Act, 1900, 1903, 3 Edw. VII, c. 33.

14. See Louis A. Wood, A History of Farmers' Movements in Canada (Toronto: University of Toronto Press, 1975, first published in 1924) pp. 169-181.

15. The Royal Commission on the Grain Trade of Canada was appointed on July 19, 1906 by Order-in-Council P.C. 1475. In the following year, the Manitoba Supreme Court found the

Winnipeg Grain Exchange, the Grain Dealers' Association and the Elevator Companies' Association not guilty of acting in restraint of trade. The King v. Gage, [1907] 13 C.C.C. 415.

16. Statutes of Canada, The Manitoba Grain Inspection Act, 1908, 7-8 Edw. VII, c. 45; and The Inspection and Sale of Grain Amendment Act, 1908, 7-8 Edw. VII, c. 36.

17. Terminal elevators were the huge storage elevators usually located at transshipment points, for example, Port Arthur, or less often at interior collection points.

18. For accounts of specific public ownership movements see Philip L. Eyler, "Public Ownership and Politics in Manitoba, 1900-1915" (Unpublished M.A. Thesis, University of Manitoba, 1972); and H.V. Nelles, The Politics of Development: Forests, Mines & Hydro-Electric Power in Ontario, 1849-1941 (Toronto: Macmillan of Canada, 1974), Chapters Six and Seven. More generally see H.A. Innis, "Government Ownership in Canada," in Problems of Staple Production in Canada (Toronto: The Ryerson Press, 1933); Herschel Hardin, A Nation Unaware: The Canadian Economic Culture (Vancouver: J.S. Douglas, 1974); and Aidan R. Vining, "An Overview of the Origins, Growth, Size and Functions of Provincial Crown Corporations," in R. Pritchard (ed.) Crown Corporations in Canada: The Calculus of Instrumental Choice (Toronto: Butterworth and Co. Ltd., 1981).

19. Public Archives of Canada, Laurier Papers (MG26G) United Farmers of Alberta to Laurier, 9 August 1910, pp. 173687-173706 and United Farmers of Alberta to Laurier 10 August 1910, pp. 173732-173749. The first letter is actually a collection of letters and resolutions from various locals; the second, from the central office, contained this resolution:

> Therefore we ask the Government at once to take steps to build and operate an elevator at the Pacific Coast and also that the Government take over and operate the present

terminal elevators at Fort William and Port Arthur, as asked for by the Grain Growers of Manitoba and Saskatchewan.

20. Bill Q, An Act respecting Grain was passed by the Senate, Debates of the Senate, 1910-11, pp. 633-634, but not by the House of Commons.

21. Statutes of Canada, The Canada Grain Act, 1912, 2 Geo. V, c. 27.

22. C.F. Wilson, A Century of Canadian Grain (Saskatoon: Western Producer Prairie Books, 1978) pp. 42-44.

23. Fowke, op. cit., p. 140.

24. Ibid., pp. 141-152.

25. See Chapter Three.

26. Fowke, op. cit., pp. 204-205.

27. Wilson, op. cit., pp. 50-52.

28. M.C. Urquhart and K.A.H. Buckley, Historical Statistics of Canada (Toronto: Macmillan of Canada, 1965) p. 359.

29. Wilson, op. cit., p. 81.

30. Ibid., p. 95.

31. Statutes of Canada, The Canadian Wheat Board Act, 1920, 10-11 Geo. V, c. 40. The previous year, An Act respecting the Canadian Wheat Board, 1919, 10 Geo. V, c. 9 was passed but it was a brief (1 paragraph) act that merely extended the life of the Order-in-Council Board.

32. Wilson, op. cit., pp. 125-130.

33. Urquhart and Buckley, op. cit., p. 359.

34. Statutes of Canada, The Canadian Wheat Board Act, 1922, 12-13 Geo. V, c. 14.

35. Royal Grain Inquiry Commission appointed on May 1, 1923 by Order-in-Council P.C. 744.

36. Report of the Royal Grain Inquiry Commission, (Ottawa, King's Printer, 1925).

37. See Chapter Three.

38. Fowke, op. cit., p. 219. See also Ian MacPherson, Each For All: A History of the Co-operative Movement in English Canada, 1900-1945. (Toronto: Macmillan of Canada, 1979) pp. 71-74 and 86-91.

40. Twenty-four of the 65 Progressives were from Ontario. They had 15 more members than the Conservatives but refused to act as the Official Opposition.

41. The idea that certain businesses, such as public utilities are "clothed with a public interest" and thus subject to government regulation has been more important in the United States than in Canada. The 1877 United States Supreme Court decision Munn v. Illinois, 94 U.S. 113, 126 (1877), dealing with the right of the state of Illinois to regulate storage rates for grain, marked the emergence of this idea. Two later Supreme Court decisions, Budd v. New York, 143 U.S. 517 (1892) and Brass v. North Dakota, 153 U.S. 391 (1894) also dealt with the handling of grain. See Charles F. Philips, Jr. The Economics of Regulation Rev'd ed. (Homewood, Illinois: Richard D. Irwin, Inc., 1969), Chapter Three.

42. Statutes of Canada, The Experimental Farm Station Act, 1886, 49 Vic., c. 23.

43. Vernon C. Fowke, Canadian Agricultural Policy: The Historical Pattern (Toronto: University of Toronto Press, 1946) pp. 231-233.

44. The Dairy Commissioner was not given any regulatory authority. His duties were promotional. The federal government also gave money to the Dairymen's Association. Canada, House of Commons Debates, 1890, pp. 2399-2403. See also Fowke, Canadian Agricultural Policy, op. cit., pp. 215-218.

45. See, for example, Statutes of Canada, An Act to provide against future frauds in the supplying of Milk to Cheese, Butter and condensed Milk Manufactories, 1889, 52 Vic., c. 43. As a means of enforcement, the Act provided that half of any fine levied was to be paid to the informant. For other relevant acts, see below.

46. Fowke, Canadian Agricultural Policy, op. cit., pp. 215-218.

47. Statutes of Canada, The Dairy Products Act, 1893, 56 Vic., c. 37. In the same year the Ontario government passed an act prohibiting the diluting of milk and the selling of tainted milk. Statutes of Ontario, An Act to prevent Fraud in the Sale of Milk, 1893, 56 Vic., c. 48. Five years earlier it passed three acts dealing with the dairy industry in the same session. Statutes of Ontario, An Act to provide for the incorporation of Cheese and Butter Manufacturing Associations, 1888, 51 Vic., c. 24; An Act respecting Creameries, 1888, 51 Vic., c. 31; and An Act to provide against frauds in the supplying of Milk to Cheese or Butter Manufactories, 1888, 51 Vic., c. 32.

48. Canada, House of Commons Debates, 1893, pp. 2251-2254.

49. Ibid., pp. 2560-2562.

50. Most of the exports went to England. By 1900, Canadian cheese had captured 60 percent of the English market.

D.A. Lawr, "The Development of Ontario Farming, 1870-1914: Patterns of Growth and Change," Ontario History, Vol. 44, No. 4, Dec. 1972, p. 248.

51. Butter exports had been quite large in the 1870s and then declined in the 1880s. The value of cheese and butter exports in 1903 was almost $32 million. All figures are from Urquhart and Buckley, op. cit., p. 378.

52. Statutes of Canada, An Act to prohibit the Manufacture and Sale of certain substitutes for Butter, 1886, 49 Vic., c. 42.

53. Canada, House of Commons Debates, 1886, pp. 547-554.

54. Ibid., p. 1339. The Preamble to the 1886 Act stated: "The use of butter ... is injurious to health."

55. Ibid., p. 550.

56. Statutes of Canada, The Butter Act, 1903, 3 Edw. VII, c. 6.

57. Statutes of Canada, The Milk Test Act, 1910, 9-10 Edw. VII, c. 59.

58. Statutes of Canada, Dairy Industry Act, 1914, 4-5 Geo. V., c 7.

59. Canada, House of Commons Debates, 1921, pp. 4437-4438. Statutes of Canada, The Dairy Produce Act, 1921, 11-12 Geo. V, c. 28.

60. In 1917 the ban on margarine had been lifted as a temporary measure. In 1921 the government introduced legislation to lift the ban permanently, but backed down under pressure from the agricultural community. Canada, House of Commons Debates, 1921, pp. 3759-3760, 3850-3896, and 3905-3906.

For the argument that the dairy industry now suffers from over-regulation, see David Lees and James Lawrence, "Red Tape Does Not a Fine Cheddar Make", Harrowsmith Vol. III: 3, No. 15, 1979.

61. Obviously, other groups benefitted as well. Business interests involved in wholesaling and exporting were one such group.

62. Statutes of Canada, Inland Revenue Act of 1875, 1874, 37-38 Vic., c. 8, s. 1. The Act did not go into effect until 1875, hence the title.

63. Ibid., s. 14.

64. A. Linton Davidson, The Genesis and Growth of Food and Drug Administration in Canada (Ottawa: Department of Health and Welfare, 1950), pp. 6-7.

65. Statutes of Canada, The Adulteration of Food Act, 1884, 47 Vic., c. 34.

66. Canada, House of Commons Debates, 1884, p. 1137.

67. Ibid., p. 1249.

68. Sir John A. Macdonald also argued that, "Such adulteration is considered to be an offence, not only against morals and society, but an offence of the character of a crime," ibid., p. 1248.

69. The Adulteration of Food Act, 1884, s. 23.

70. Davidson, op. cit., pp. 44-46 and 104-105. There are now about 300 food standards. The federal government's authority to set food standards was called into question in Labatt Breweries of Canada Ltd. v. Attorney-General of Canada, [1980] 1 S.C.R. 821. The Supreme Court held that the

federal government could not set a standard for beer under either its trade and commerce power or its criminal law power.

71. Ibid., p. 56.

72. Statutes of Canada, The Food and Drugs Act, 1920, 10-11 Geo. V, c. 27.

73. Statutes of Canada, The Meat and Canned Foods Act, 1907, 6-7 Edw. VII, c. 27.

74. Gabriel Kolko, The Triumph of Conservatism (Chicago: Quadrangle Books, 1967, first published in 1963), pp. 98-108.

75. Statutes of Canada, An Act to provide against Infectious or Contagious Diseases affecting Animals, 1879, 42 Vic., c. 23.

76. Fowke, Canadian Agricultural Policy, op. cit., pp. 194-205.

77. Ibid., p. 192. See also Richard Perren, "The North American Beef and Cattle Trade With Great Britain, 1870-1914," The Economic History Review, Vol. 24, No. 1, February 1971, pp. 430-444.

78. Urquhart and Buckley, op. cit., p. 379. See Michael Bliss, A Canadian Millionaire: The Life and Business Times of Sir Joseph Flavelle, Bart. 1858-1939 (Toronto: Macmillan of Canada, 1978), Chapter Two, for an excellent description of the pork-packing business. It was a profitable business for Flavelle. Bliss estimates (pp. 50-51) that Flavelle, starting with an initial investment of $95,000 in 1892, was worth more than a million dollars by 1900.

79. Upton Sinclair, The Jungle (Toronto: McLeod and Allan Publishers, n.d.) p. 161.

80. Public Archives of Canada, Laurier Papers, J.H. Lauer to Laurier, 18 June 1906, pp. 111383-111385.

> That in view of the recent scandalous revelations of the meat-packing interests in Chicago, this Board respectfully urges upon the Government the prompt appointment of Dominion Inspectors ... not only to secure wholesome food for our own people, but to inspire confidence in the Canadian industry which is hereby offered an exceptional opportunity to capture the export markets of the Empire and Continental Europe.

Lauer was the Secretary of the Montreal Builders' Exchange. Exports of bacon, ham and beef all dropped from 1906 to 1907. Urquhart and Buckley, op. cit., pp. 377 and 379.

81. Canada, House of Commons Debate, 1906-07, p. 806.

82. Ibid., pp. 806-807.

83. A Mr. Barr was an exception, ibid., pp. 1318-1319 and 1629-1630.

84. Ibid., pp. 1319-1321. See also pp. 1622-1623.

85. Kolko, op. cit., pp. 104-108.

86. Statutes of Canada, Cold Storage Act, 1907, 6-7 Edw. VII, c. 6.

87. Canada, House of Commons Debates, 1906-07, p. 2448.

88. Ibid., 1907-08, pp. 10551-10553.

89. A bill (No. 99) to regulate the manufacture and sale of proprietary and patent medicines in Canada was introduced on February 21, 1907.

90. Ibid., pp. 6215-6218 and 10552.

91. Ibid., p. 10552. This is an early example of an attitude that is still prevalent. Business prefers co-ordinated, non-overlapping regulation.

92. Statutes of Canada, The Proprietary or Patent Medicine Act, 1908, 7-8 Edw. VII, c. 56.

93. Canada, House of Commons Debates, 1907-08, p. 10553.

94. Statutes of Canada, An Act to prohibit the importation, manufacture and sale of opium for other than medicinal purposes, 1908 7-8 Edw. VII, c. 50.

95. R. MacGregor Dawson, William Lyon Mackenzie King: A Political Biography (Toronto: University of Toronto Press, 1958) pp. 146-147. King's Report on the Need for the Suppression of the Opium Traffic in Canada was printed in Canada, Sessional Papers, 1908, No. 36B.

96. Canada, House of Commons Debates, 1907-08, p. 13523.

97. On Canadian immigration policy and attitudes towards immigrants see R.C. Brown and R. Cook, Canada, 1896-1921: A Nation Transformed (Toronto: McClelland and Stewart Limited, 1974) pp. 68-74. More specifically, see W.P. Ward, White Canada Forever: Popular Attitudes and Public Policy Towards Orientals in British Columbia (Montreal: McGill- Queen's University Press, 1978).

98. Statutes of Canada, The Department of Health Act, 1919, 9-10 Geo. V, c. 24.

99. See Bernard Ostry, "Conservatives, Liberals and Labour in the 1880's," The Canadian Journal of Economics and Political Science, Vol. 27, No. 2, May 1961, pp. 141-161. Statutes of Ontario, The Ontario Factories' Act, 1884, 47 Vic., c. 39.

100. Statutes of Canada, The Public Work (Health) Act, 1899 62-63 Vic., c. 30. This Act was passed as a result of an investigation of working conditions during the construction of the Crow's Nest Pass Railway which was being built with a federal subsidy. As well, the federal government regulates working condition on railways and ships with the Railway Act and the Canada Shipping Act.

101. In addition to The Proprietary or Patent Medicine Act and The Food and Drugs Act, the other obvious exception was The White Phosphorus Matches Act, 1914, 4-5 Geo. V, c. 12. The purpose of this Act was to prohibit the use of white phosphorus in the manufacture of matches in order to prevent phosphorus necrosis, a disease which afflicted workers in match factories. The introduction of legislation was a result of the efforts of Mackenzie King.

102. For example, see Steven Kelman, "Regulation that works," The New Republic, November 25, 1978, pp. 16-20.

103. On the issue of who benefits, see William Tucker, "Environmentalism and the Leisure Class," Harpers, December 1977, pp. 49-56, 73-80.

104. Charles L. Schultze, The Public Use of Private Interest (Washington, D.C.: The Brookings Institution), pp. 46-54.

105. Paul Weaver, "Regulation, Social Policy, and Class Conflict," The Public Interest, No. 50, Winter 1978, p. 59.

106. Ibid., pp. 60-61.

107. Janet Foster, Working For Wildlife: The Beginning of Preservation in Canada (Toronto and Buffalo: University of Toronto Press, 1978), p. 18; and R.C. Scace, "Banff Townsite: A Historical Geographical View of Urban Development In A Canadian National Park," in J.B. Nelson (ed.) Canadian Parks in Perspective (Montreal: Harvest

House Ltd., 1970), p. 188. Scace claims that the springs were discovered in 1882.

108. Order-in-Council P.C. 2197, 25 November 1885.

109. Quoted by R.C. Brown, "The Doctrine of Usefulness: Natural Resource and National Park Policy in Canada, 1887-1914," in Canadian Parks in Perspective, op. cit., p. 48.

110. Statutes of Canada, Rocky Mountains Park Act, 1887, 50-51 Vic., c. 32

111. Canada, House of Commons Debates, 1887, p. 233.

112. Ibid., p. 233.

113. Ibid., pp. 195-196.

114. Ibid., p. 234.

115. Brown, op. cit., p. 49.

116. Statutes of Canada, The Unorganized Territories Game Preservation Act, 1894, 57-58 Vic., c. 31.

117. Quoted by Foster, op. cit., p. 54.

118. For accounts of specific aspects of the conservation movement, see R.P. Gillis, "The Ottawa lumber barons and the conservation movement, 1880-1914" Journal of Canadian Studies, Vol. 9, No. 1, February 1974; and H.V. Nelles, op. cit., Chapter Five. More generally, see George Altmeyer, "Three Ideas of Nature in Canada, 1893-1914," Journal of Canadian Studies, Vol. 11, No. 3, August 1976.

119. Quoted by Brown, op. cit., p. 57.

120. Statutes of Canada, The Dominion Forest Reserves and Parks Act, 1911, 1-2 Geo. V, c. 10.

121. Foster, op. cit., pp. 75-76.

122. Statutes of Upper Canada, An Act to amend an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, entitled, "An Act for the Preservation of Deer within this Province," and to extend the provisions of the same; and to prohibit Hunting and Shooting on the Lord's Day, 1839, 2 Vic., c. XII. The Act applied to several game birds as well as to deer.

123. Statutes of Canada, The Migratory Birds Convention Act, 1917, 7-8 Geo. V, c. 18. There was provincial legislation protecting birds, but it was not enforced. See, for example, Statutes of Ontario, An Act for the Protection of Insectivorous and other Birds, 1889, 52 Vic., c. 50.

124. Lacey Act, c. 553, 31 Stat. 187 (1900).

125. The Weeks-Maclean Bill was attached as a rider to an agricultural appropriations bill.

126. This discussion of the genesis of the act is based on Janet Green, "The Federal Government and Migratory Birds: The Beginning of a Protective Policy" Canadian Historical Association Historical Papers, 1976.

127. Statutes of Canada, The Northwest Game Act, 1917, 7-8 Geo. V, c. 36.

128. Foster, op. cit., pp. 193-194.

129. Scace, op. cit., pp. 190-192.

130. Nelles, op. cit., p. 214.

131. Foster, *op. cit.*, p. 3.

132. Except for the following, the citations for these Acts can be found in the Notes above. Statutes of Canada, *The Railway Act*, 1903, 3 Edw. VII, c.58; *The Industrial Disputes Investigation Act*, 1907, 6-7 Edw. VII, c.20; *Combines Investigation Act*, 1910, 9-10 Edw. VII, c.0; *The Loan Companies' Act*, 1914, 4-5 Geo. V, c. 40; and *The Trust Companies' Act*, 1914, 4-5 Geo. V, c.55.

Chapter 5

REGULATION AND THE DEPRESSION

(1) Introduction

For almost all Canadians, the Great Depression of the 1930s was a totally new experience. Many remembered the brief recessions of 1920-21, 1913-14 or perhaps even the difficult years of the 1880s and early 1890s, but the depression that began in 1929 was different. It was not caused by an agricultural crisis, a decline in investment capital or by any other single identifiable factor. Nor were its effects limited to certain economic activities; all indices of growth registered declines.[1] All regions of the country were affected and the West even had to contend with crop failures in addition to the problems faced by the rest of the country. The depression was all the more alarming since it arrived almost unannounced bringing to an end a period of incredible prosperity.

There were, in fact, several prior indications that the Canadian economy was headed for trouble, but these were not heeded. Even after the stock market crash in October of 1929, many people failed to appreciate what was happening. Mackenzie King's biographer notes that two days after the crash, the Prime Minister gave a speech in Winnipeg in which he proclaimed that the country was in good shape. He did not refer to the crash nor was it mentioned in his diary for the rest of the year.[2] Even as late as February 1930, the Liberal government failed to acknowledge what was occurring and instead proudly noted in the Speech from the Throne that employment in 1929 had reached an all-time high.[3] Such myopia could not last and by the time the election was called in the summer of 1930, it was obvious to everyone that the problems with the economy were serious.

It was appropriate that the election was fought mainly on the tariff issue with R.B. Bennett, the Conservative leader, promising to use higher tariffs to blast a way into the markets of the world for Canadian products. It was the last election fought on the issue that had dominated Canadian politics for more than fifty years. When the next election was held Canadians were finally beginning to realize that tinkering with the tariff was no longer an effective way to manage the economy. This technique did not fail for want of trying. On assuming office in 1930, one of the first things the new Conservative government did was introduce the highest tariff increases since the inception of the National Policy in 1879.[4]

Although the Bennett government began by trying to apply old solutions to new problems, it eventually produced some of the most innovative legislation yet seen in Canada. It created the Canadian Radio Broadcasting Commission, the Bank of Canada, and the Canadian Wheat Board; it initiated a federal role in the regulation of the marketing of agricultural products; and it passed the several acts which have become known as "the Bennett New Deal."[5] In different ways, each of these actions increased the amount and scope of federal regulation. Of these five regulatory initiatives, three - the Wheat Board, the regulation of marketing and the Bennett New Deal - will be examined in detail. Recently completed studies of the creation of the Canadian Radio Broadcasting Commission and the Bank of Canada can be consulted by anyone wishing to find out about federal regulation in these areas.[6]

(2) Marketing Wheat

(i) Searching For a Policy

The first serious problem with which the new government had to deal was the collapse of wheat prices.[7] On the day that his Conservative government assumed office, Bennett met with the three prairie premiers to discuss the situation. The problems faced by western farmers were not simply a product of the depression, they actually began with the huge 1928-29 wheat crop of over 500 million bushels. The size of the crop together with increased supply from other sources drove prices down to $1.24 per bushel from $1.46 for the 1927-28 crop. Prices recovered in the summer of 1929 and it appeared that the low 1928 prices had been an aberration. It was on the basis of the high mid-summer prices that the provincial wheat pools settled on the amount of the initial payment to the farmers for the 1929 crop. Then prices began to fall and it became apparent that the initial payment had been too generous. The provincial governments had to step in to save the pools and the Central Selling Agency.[8] When prices continued to fall throughout the spring and summer of 1930, the prairie premiers approached Bennett for assistance. The federal government agreed to protect the pools and the Central Selling Agency from collapse in return for effective control of the Central Selling Agency. By the fall of 1930, the federal government was once more involved in the marketing of wheat.[9]

This was only a temporary solution. The federal government was not committed to intervening in the marketing of the 1931 crop. The private companies, who had marketed almost half of the wheat in the years from 1925 to 1929 and more than half of the 1930 crop, thought that the marketing of the 1931 crop should be left to them. Many of the growers wanted the restoration of the Wheat Board. Forced with the necessity of finding a suitable policy, the government appointed a Royal Commission headed by Sir Joseph Stamp, a British economist.[10] Neither of the other two commissioners were grain farmers and one was known to be critical of farmers' organizations. The Commission Report, like that of the Turgeon Royal Commission (1923-25), came out in support of futures trading on the open market.[11] For the next few years the open market prevailed with the federal government buying wheat futures in an attempt to provide price support. Government intervention took two other forms in the period prior to the creation of the Wheat Board. In 1931, Ottawa paid farmers a bonus of five cents a bushel at a cost of over $12 million. As well, the federal government actively sought international agreements with its most notable success being the London Wheat Agreement of 1933.[12]

(ii) The Return of the Wheat Board

As the depression continued, the government acquired more and more wheat in an attempt to stabilize prices. By mid-1935, the government had accumulated over 200 million bushels of wheat.[13] By the summer of 1934, John McFarland, who was in charge of the government's stabilization efforts, had come to the reluctant conclusion that the restoration of the Wheat Board was the only option left to the government. In June, he wrote Bennett a letter explaining his change of heart:

> I have been adverse to the demands for a Government Wheat Board monopoly, because I have considered it in the best interests of Canada to avoid destroying the old system .... The only factor which has saved the system thus far, has been our support. I am now coming to the conclusion that we are near the end of the road...I am therefore putting it up to you as to the advisability of seriously considering a national wheat control board.[14]

Whatever further convincing Bennett needed was provided by his government's dismal electoral prospects. In the course of the year, he had witnessed the defeat of Conservative provincial governments in Ontario and in Saskatchewan, as well as the defeat of a number of Conservative candidates in federal by-elections.

Legislation was introduced in June of 1935 providing for a compulsory board that would take delivery of all grains. The importance the government placed upon the legislation can be judged by the presence of Bennett as the chairman of the special committee appointed to study the bill.[15] The bill was met with considerable opposition from many of the witnesses who appeared before the committee and from the Liberal members. The bill that emerged from the committee and finally passed was quite unlike the original.[16] Instead of controlling the marketing of all grain, the new Wheat Board would offer to buy wheat at a set price. The growers then would be able to choose between it and the price offered by private grain dealers. Instead of a powerful monopolistic Wheat Board that might have been able to raise prices, the farmers got a Wheat Board that was a kind of insurance scheme. It ended up purchasing almost all of the annual crop or none at all depending upon whether the market price was above or below the floor price. It acquired about 70 percent of the 1935 crop and all of the 1938 crop, but none of the 1936 or 1937 crop. When it purchased wheat, it lost money.[17]

(iii) The Liberals and the Wheat Board

The new Liberal government, which came into office in 1935, was even less enthusiastic about intervening in the marketing of wheat than the Bennett government had been. The Prime Minister, W.L. Mackenzie King, wanted to, "get away from unnecessary regulation as much and as soon as possible."[18] Although several Cabinet ministers wanted to get rid of the Wheat Board immediately, it was ultimately decided that it was easier and politically safer to set a low floor price to ensure that all wheat would be sold through private channels. In June 1936, the government appointed W.F.A. Turgeon to head the Royal Grain Inquiry Commission to investigate the marketing of wheat.[19] When it finally reported in 1938, the Commission endorsed the marketing of wheat on the open market with the provison that due to the abnormal circumstances the Wheat Board should remain.[20] In 1938 prices fell, and despite the fact that a floor price was set lower than that of the two previous years, the Wheat Board handled the entire crop at a loss of more than $60 million.

This experience with the 1938 crop hardened the Liberal government's commitment to get rid of the Wheat Board. The government was supported not only by the Royal Commission Report, but also by the Canadian National Millers' Association:

> We most earnestly urge that the free marketing of wheat and flour should not be interfered with by any form of control of prices and that the question of compensation for our farmers be dealt with entirely separately from the problem of marketing.[21]

The first step was to get rid of the Wheat Board, but when it became apparent that this was not politically possible, it tried "legislative strangulation." It introduced an amendment to the Wheat Board Act establishing a floor price of 60¢ per bushel. The effects of such an amendment were twofold: it would ensure that the Board would not make any purchases except under exceptional circumstances; and, by making the price statutory, the government would no longer be burdened with having to set a price each year. The western farmers were as opposed to this measure as they were to the abolition of the Wheat Board. When the western Members calculated how many seats they could lose if they went ahead with the legislation, it was prudently decided to raise the floor price to 70¢. This new price was then coupled with the stipulation that no producer could deliver more than 5,000 bushels to the Board.[22] This meant that the Board would never acquire the entire crop. In an attempt to deal with eastern criticism, the provisions of the Act were extended to Ontario farmers. Five western Liberals broke with the government to vote against the bill.[23]

The government was more successful in implementing some of the other Royal Commission recommendations. The Prairie Farm Assistance Act[24] was an attempt to make the amendments to the Wheat Board Act more palatable. This Act, passed in 1939, established a kind of insurance scheme partly financed by a one per cent levy on all marketed grain. Payments were made when yields were low or when there was a total crop failure. This scheme had one advantage over the Wheat Board because it helped those with poor crops while price supports helped those with good crops. The Wheat Co-operative Marketing Act[25] was passed in an attempt to encourage co-operative marketing by providing financial assistance. The Grain Futures Act[26] was designed to deal with producer complaints by increasing the regulation of the futures market. The act gave the Board of Grain Commissioners considerable control over the Winnipeg grain exchange. Because of the change in circumstances produced by the war, the Act never went into effect.

The 1939 legislation was produced by two factors: the desire to get the government out of the marketing of wheat; and the need to protect Liberal seats in the West. The Liberals, as we have noted, were not enthusiastic about the Wheat Board to begin with, but they were pressured by groups such as the National Millers' Association and by eastern Canadians who believed they were subsidizing farmers' incomes.[27] The Wheat Board survived this opposition because of political expediency. Political expediency was also a factor in the passage of the other 1939 legislation although certainly some of it deserved to be passed on its own merits.

The new initiatives undertaken by the federal government in the regulation of the wheat trade reveal little in the way of consistent policy. From the Conservative government's intervention in 1930 to the Liberal's pre-war legislation, the actions taken were responses to a series of economic and political crises. They were designed to prevent chaos rather than to encourage orderly marketing. In the end, no one was satisfied - the producers did not get a Wheat Board until the worst of the depression was over. Even then it was not the compulsory board they wanted and yet this was more than the Liberal government and many eastern Canadians could accept. It was apparent that the western farmers were no longer able to get the legislation they desired. The best they could do was to prevent legislation they opposed. The one piece of legislation that would have met some of their grievances, the Grain Futures Act, was passed too late to do any good and even then, it was a second choice. It was designed to regulate a futures market that many producers did not think should have existed at all.

(3) Marketing Natural Products

(i) The Failure of Provincial Marketing Regulation

Perhaps the greatest regulatory innovation in the 1930s was government intervention in the marketing of agricultural products. It has since become one of the most important areas of government regulation. By 1977, there were 121 federal and provincial agencies regulating the marketing of agricultural products.[28] The best known of these agencies is the Wheat Board created in 1935, but it was not the first marketing body. Federal regulation of marketing began with the Natural Products Marketing Act of 1934 while provincial regulation began with the British Columbia Produce Marketing Act in 1927.[29] Before discussing the federal act, it is necessary to examine the provincial attempt to regulate the marketing of agricultural products.

Demand for government intervention in British Columbia came mainly from Okanagan Valley fruit growers who had participated in several unsuccessful attempts to control the marketing of their produce through co-operative organizations.

These attempts failed for the same reason that such co-operative marketing schemes usually fail - the undercutting of prices by those who refused to participate. The private cartel was imperfect. The growers who undercut prices often did better than those who co-operated since they did not have to bear any organizational costs and they could ship immediately while the other growers attempted to spread deliveries out in order to keep prices high.[30] When individuals benefit from a transaction without bearing any of the cost, a "free rider" situation occurs. Not surprisingly, this produces a demand on the part of those who bear the cost for compulsory participation, hence the sharing of organizational and transaction costs. This is what happened in British Columbia. At the 1927 Convention of the Fruit Growers Association, a resolution was passed asking the government

> to introduce legislation at the present session of the legislative to provide for the setting up of a Committee of Direction which will be brought into being in time to have control of the movement of 100 per cent of the 1927 tree fruit and vegetable crop.[31]

The resolution was almost a formality since the government was already prepared to act. The government of British Columbia had an understandable interest in protecting the industry and it had an understandable interest in self-preservation. The success of the fruit growers can, in part, be attributed to the fact that they were a localized, relatively homogeneous interest group who could potentially make things difficult for the government. At the same time, the costs imposed by the regulation would be widely dispersed making it relatively safe to meet the growers' demands.[32] Other methods of assisting the growers such as improved cold storage facilities and relief of irrigation charges were considered by the government but rejected in favour of a compulsory marketing scheme.[33] The B.C. Minister of Agriculture argued that compulsion was necessary because, "it had been found impossible to secure 100 percent organization by voluntary methods. There were always those who stayed out and thus 'rode on the band wagon without paying the fee'"[34] i.e., the free rider problem. By March 1927, the B.C. Produce Marketing Act was law. It did not provide for direct government regulation of prices, rather it allowed the Interior Tree-Fruit and Vegetable Committee of Direction to control the marketing of products in the hope that this would keep prices up. The Minister of Agriculture was forthright enough to admit that it was expected to achieve another, less admirable, objective: "The Marketing Act is designed, amongst other things, to restore the industry to the white man."[35]

The Act was in operation until 1931 when it was declared unconstitutional on the grounds that it regulated interprovincial trade and constituted a form of indirect taxation.[36] It was a bad year for compulsory marketing schemes, a Saskatchewan act providing for the compulsory pooling of wheat was also declared to be ultra vires.[37] Two years later, a British Columbia act designed to equalize returns to milk producers was overturned.[38] Not surprisingly, producers began to look to the federal government for help.

(ii) The Federal Attempt

The federal government, or more particularly Robert Weir, the Minister of Agriculture, was more than willing to help.[39] In fact, Weir had discussed a federal role in marketing even before it was apparent that provincial regulation was in jeopardy.[40] Draft legislation for a federal marketing act was prepared as early as June, 1932. Nothing came of it. In the following year when another draft was sent to R.B. Bennett, the Prime Minister specifically rejected the idea behind it. Producer demands for federal marketing legislation were articulated at two conferences held in Regina and Toronto in the summer and early fall of 1933. At the latter conference it was resolved:

> that the Minister of Agriculture forthwith cause to be prepared a farm products marketing measure which, insofar as federal legislative authority extends, will enable the producers of agricultural products in any part of Canada to take advantage of legislation that may be federal or provincial, embodying the principles of the British *Agricultural Marketing* Act....[41]

The British Act was passed in 1931 and amended in 1933. It was primarily designed to limit imports and in fact was not the kind of legislation Canadian producers needed.

Four months later, the government announced its intention to introduce agricultural marketing legislation. The obvious question that needs to be answered is why Bennett agreed. Was he simply responding to what he perceived to be widespread support for the measure? Vinning mentions that both Premier Henry of Ontario (a Conservative) and Premier Brownlee of Alberta (United Farmers of Alberta) had expressed support.[42] Alvin Finkel, in his study of business-government relations in the 1930s, claims that there was widespread support among wholesalers, processors and distributors. He refers to a letter written by John Burns, general manager of Burns and Company (a large meat packer), to a Canada Packers executive in which Burns argued that since regulation was inevitable:

> is it not part of wisdom for us to recognize this fact and work with the different governments in bringing about the new regulations and thus have something to say as to these regulations made entirely by others, imposing hardships on business which are sometimes harmful and costly and which do not accomplish what they are designed to accomplish?[43]

Unfortunately, Finkel does not demonstrate that people such as Mr. Burns had any input in shaping the legislation.

Of necessity, the legislation was somewhat complicated in an attempt to avoid constitutional problems. Local marketing boards were to be established upon successful petition by, "A representative number of persons engaged in the production and marketing or the production or marketing of a natural product."[44] A Dominion Marketing Board was to supervise the local boards. Complementary legislation was passed in all nine provinces to give the local boards the authority to regulate intraprovincial marketing while the Dominion Board delegated authority to the local boards to allow them to also regulate interprovincial and export marketing. The Act dealt with more than just agricultural products. For example, the Dominion Board was given the authority to provide grants or loans for the "construction or operation of facilities for preserving, processing, storing, or conditioning the regulated product and to assist research work relating to the marketing of such product."[45]

The bill did not have an easy passage. The Liberal opposition, led by Mackenzie King, opposed it in principle. They disliked the delegation of authority to occupational groups and the element of compulsion. King referred to it as "a system of planning from beginning to close" comparable to what one found in Russia.[46] He also criticized the bill for failing to protect the consumer:

> But here we are in this parliament, representative of all classes of the community, representative of the consumers of Canada as a whole, and we are being asked by the government in this legislation to allow all matters relating to the regulation of marketing and questions that affect the prices and supply of commodities and the like, to be dealt with by these interested occupational groups, and without a single safeguard being provided to protect the interests of the consumers.[47]

As the person responsible for the Combines Investigation Acts of 1910 and 1923, King was skeptical about any scheme that encouraged combinations. The bill survived the Liberal opposition and was passed with the support of the handful of farmer and labour representatives and with the support of William Motherwell, a former Liberal Minister of Agriculture.

The Dominion Board was in operation by the end of the summer of 1934 and immediately began to examine applications for local boards. Overall, it rejected more marketing schemes than it accepted, but a total of 22 schemes were established. Appropriately, the first successful proposal came from the British Columbia fruit growers. The Board made use of the authority granted in Section 9 of the Act to administer two schemes directly: the Dairy Products Marketing Equalization Scheme and the Butter Export Stabilization Scheme. No new schemes were set up after the Liberal victory in the 1935 election.[48]

The Liberal government referred the Act to the Supreme Court of Canada for a ruling on its constitutionality. The Court rejected the argument that the federal government had the necessary authority under either the "peace, order and good government" clause of Section 91 or as a matter of trade and commerce and declared the Act ultra vires.[49] In 1937, the Judicial Committee of the Privy Council rejected an appeal by the government of British Columbia.[50] The marketing schemes that had been established under the Natural Products Marketing Act were dismantled.

The decision seemed to leave the regulation of marketing in constitutional limbo. Within the space of six years, the courts had ruled both provincial and federal acts to be ultra vires. The solution lay in more precise legislation. The British Columbia government passed an Act in 1936 after it was apparent that the federal act was in jeopardy that survived the scrutiny of the Judicial Committee of the Privy Council.[51] New Brunswick and Manitoba followed this example before the decade was over.[52]

(iii) The Triumph of the Producer?

Whether at the federal or the provincial level, the regulation of marketing was introduced in response to producer demands. This is the conclusion reached by Vinning[53] who rejects "any attempt to explain the introduction of the 1927 Produce Marketing Act and the 1934 Dominion Marketing Act in terms of market failure."[54] He argues that the existence of the provincial act suggests that the depression has been overemphasized as an explanation for the federal act.[55] Vinning's conclusion has considerable merit, but it needs to be qualified. Distinctions have to be drawn between the situation in British Columbia and the situation that produced the federal Natural Products Marketing Act. The producers who pressed for the British Columbia legislation were localized and relatively homogeneous and as a result, more easily organized. For the same reason, it was difficult for the provincial government to reject their demands. The producers who pressed for the federal act were scattered and diverse. They included Prince Edward Island potato farmers, Ontario cheese-makers and Saskatchewan wheat growers. Without the depression they might never have become organized enough to effectively state their case. It is also questionable whether the Bennett government, let alone one led by King, would have given in to their demands under normal circumstances. After all, wheat producers had been unable to convince either the Liberals or the Conservatives to bring back the Wheat Board until 1935.

Secondly, it is possible to question Vinning's emphasis on producers to the exclusion of other groups. Alvin Finkel's argument that processors, wholesalers and distributors were instrumental in achieving the passage of the Natural Products Marketing Act deserves consideration.[56] Vinning himself produces evidence suggesting that other groups were interested in marketing legislation. In an Appendix to his thesis, he discusses the various schemes that were approved. The British Columbia Red Cedar Shingle Export Scheme was administered by an export association. It was designed to help manufacturers by setting limits on exports to the United States. This was necessary because if exports exceeded a certain level, the American government would retaliate with tariff increases.[57] The British Columbia Dry Salt Herring and Dry Salt Salmon Scheme was designed to help fish packing companies. Two of the five board members were associated with the Canadian Manufacturers' Association - none were fishermen. The intent was to protect "white" operators who were being pressured by Japanese operators financed from Japan.[58] The Canada Jam Marketing Scheme regulated the marketing of a manufactured product rather than a unprocessed product. Nine of the fourteen board members were representatives of the manufacturers while only three represented the growers. The scheme was so successful at raising prices that consumers reduced their purchases of jams, jellies and marmalades.[59] The federal Natural Products Marketing Act was amended in 1935 to include wholly or partly manufactured products of the forest.[60] This was to allow pulp and paper manufacturers to make use of the act. In 1934, the president of the Canadian Pulp and Paper Association had suggested that government intervention was neccessary:

> Our government might do well to consider some such scheme as the American National Recovery Administration for the stabilization of Canadian industry, which could be brought about by vesting in industry of certain powers and authority which would enable it, through trade associations, to control itself in all its main phases...[61]

The pulp and paper manufacturers were not able to make use of the act because of the unwillingness on the part of the new Liberal government to extend the operation of an act they considered unconstitutional. The pulp and paper manufacturers were not going to be denied the use of the coercive power of the state. Having been thwarted at the federal level, they got the assistance they needed from the provinces.[62]

Finally, Vinning's conclusion needs to be qualified by placing the introduction of the federal Act in its proper context. The type of regulation introduced by the Natural Products Marketing Act differed from previous federal regulation in that it involved considerable delegation of authority to the regulated industry. By limiting the freedom of producers (and manufacturers) to a certain extent, it gave them more control over the marketing of their products. In this sense, it was part of a general move towards industrial self-government. This idea was very much "in the air" in the 1930s: it can be found in Hankin and MacDermot's book, Recovery by Control;[63] Roosevelt's New Deal legislation; and the 1935 Dominion Trade and Industry Commission Act. Vinning ignores this and by doing so, he makes the Natural Products Marketing Act seem almost unique. It was not.

(4) The Bennett New Deal

(i) The Arguments for Intervention

The reformist impulse, which produced so much social questioning during and immediately after World War I, disappeared during the 1920s in the rush to return to normalcy. The depression produced a dramatic change. F. R. Scott, a McGill law professor, has explained how it affected him:

> My eyes became suddenly open to the realities of the social system which I had taken for granted. I was drawn into discussions with groups of my contemporaries who were trying to find out what had happened.[64]

Scott goes on to say, "It was obvious that the capitalist system as then constituted had collapsed."[65] Scott's sudden awakening led to the creation of the League for Social Reconstruction[66] which in turn stimulated the creation of the Co-operative Commonwealth Federation. While Scott put his faith in socialism, others put their faith in William Aberhart's bibilical prophecies and Social Credit theories. Solutions to the country's economic problems were one thing Canada had in abundant supply.

One of the more interesting proposals to come out of the depression was Recovery by Control by F. Hankin and T.W.L. McDermot. They start with two central assumptions: every individual or organization is primarily motivated by self-interest; and combinations, associations and co-operation are inevitable.[67] They had little faith in the invisible hand of Adam Smith and a great deal of faith in government. In their view government was one of the three participants who constituted the economic system, the other two being capital and the workers.[68] Their emphasis on the importance and inevitability of organization, together with their view of the government as an equal participant with labour and capital suggests a strong corporatist strain.[69] They definitely favoured regulation, but it was not always regulation of the conventional type. They were quite critical of anti-combines legislation, "it is a strong impediment to the invincible instinct of human beings to organize themselves",[70] and urged its repeal or amendment:

> so as to make planning and control possible; to encourage, as has been done in agriculture, the formation of associations of trades and manufacturers in such a way as to lead to self-government in each industry.[71]

Each industry would then have the power to establish prices and production quotas. They proposed an excess profits tax to deal with any instances of profiteering which might result. Although the book is interesting for any number of reasons, it is of particular interest for proposing "industrial self-government." It was an idea whose time had arrived in the 1930s.

In 1933 both major political parties held summer conferences to discuss public policy. At these conferences, politicians and academics such as MacDermot, Harold Innis, Alexander Brady and W.T. Jackman discussed ways to deal with unemployment and such topics as "The Significance for Canada of the American New Deal."[72] That these conferences were held was an indication of the new strength and status of the academic community. Another indication was the founding of The Canadian Journal of Economics and Political Science in 1935. In the first issue, Stephen Leacock combined his talents as an economist and as a humourist to produce an article entitled, "What Is Left of Adam Smith?" Not much, according to Leacock: "Imagine, then, anyone looking for light on the question of overproduction of today from the pages of the classical economist. They said it cured itself. It does. So does life."[73]

Leacock appreciated the need for government action even if he did not always approve of the specific form which it took. Almost everyone with a solution to the country's economic problems, whether they were followers of William Aberhart or J.S. Woodsworth, the first leader of the Co-operative Commonwealth Federation, called for a larger role for the government. The C.C.F.'s Regina Manifests of 1933 called for the amendment of the Canadian constitution, "so as to give the Dominion government adequate powers to deal effectively with the urgent economic problems which are essentially national in scope." People such as Sir Joseph Flavelle, the semi-retired millionaire businessman, whose cure for the depression was restraint, skeleton governments and balanced budgets were in the minority.[74] Still, not everyone who questioned the value of a larger role for government could be written off as an anachronism. Harold Innis, the greatest Canadian economist of the day, was equally skeptical of the ability of economists to prescribe cures and of the ability of governments to administer them:

> The dangers of national finance capitalism have been acute in Canada. With the construction of boards and the complicated machinery which has emerged in Ottawa since the war the dangers are not less, and considering the inexperience of those who man such recently installed devices, are much more.
>
> Oh! let us never, never doubt
> What nobody is sure about! (Belloc)[75]

Innis' warning nothwithstanding, there was a widespread public acceptance of the need for government action. Although it would be easy to assume that this was an important factor in the introduction of the Bennett New Deal, it is not at all obvious that it was a significant influence.

(ii) The Price Spreads Inquiry

The investigation of price spreads, which began in 1934 as a Select Committee of the House and then became a Royal Commission, was definitely an important factor.[76] The background to the inquiry has been described by J.R.H. Wilbur, the biographer of H.H. Stevens, the Minister of Trade and Commerce. As Wilbur explains it, a number of incidents were brought to the attention of Stevens between the spring and fall of 1933 which suggested that large discrepancies existed between the cost and the retail price of several commodities. This evidence, together with the plea of the managing director of the Canadian Manufacturing Association to do something for the more than two hundred small manufacturers being "driven into bankruptcy by certain practices of the buyers of the large department stores and chain store organizations",[77] seems to have convinced Stevens to act. He finally voiced his concern in a Toronto speech to a national convention of shoe retailers and manufacturers in January, 1934. He was particularly critical of chain stores and department stores such as Eaton's for using their size to gain price concessions which in turn forced manufacturers to lower wages. He went on to warn his audience that unless such abuses were ended they would destroy the system.[78] The audience's reaction and the public's reaction to press reports of the speech were favourable while the T. Eaton Company and the Robert Simpson Company were outraged. Stevens offered to resign, but instead Bennett made him the chairman of a Select Committee of the House to investigate price spreads.

The Committee began public hearings in February 1934 and they received considerable attention in the press. When the House prorogued in July, the committee had not yet completed its inquiry. The attention which the committee had received left Bennett with little choice but to turn it into a Royal Commission.[79] The fact that the Royal Commission was a continuation of a Select Committee helps to explain why all of the eleven commissioners were Members of Parliament. Stevens acted as the chairman. The Royal Commission investigated such things as price discrimination, the concentration of business, wages and working conditions and the problems faced by the primary producer. Generally, the Report concluded that many "evils" existed. It concluded that price discrimination was very common and went on to explain:

> Where discrimination of this sort exists, the competitive struggle does not necessarily result in the selection of the most efficient. Thus an injury to the public accompanies the obvious injury to those who are not so lucky as to be the recipients of such favours.[80]

In its examination of concentration, it examined business consolidations and came up with some interesting findings. In the seven years from 1924 to 1930 inclusive, 246 consolidations absorbed 671 concerns with more than half of these occurring in 1928 and 1929.[81] The Report concluded that large corporations were growing more rapidly than business in general.[82] It came out unequivocally in favour of more government regulation:

> We recommend, that is to say, not only the most complete maintenance or restoration of competition, where that is possible, but also gradual, progressive, and effective regulation in that growing field of business enterprise where monopoly or imperfect competition will continue, inevitably to develop, and, if unregulated, will continue to exploit the primary producer, the wage-earner, and the consumer, in the shameful ways so often disclosed by the evidence before us.... Unless we can achieve this goal in the reasonably near future, there well may be forced upon us changes in our economic, social and political organizations besides which our proposals, important as we believe them to be, will pale into insignificance.[83]

The specific proposals included numerous amendments to the Dominion Companies Act and a lesser number of amendments to several other acts; the creation of a Live Stock Board and a Fisheries Control Board to aid primary producers; "National regulation of employment conditions preferably by Dominion legislation, if feasible, or, alternatively by inter-provincial co-operation"; and the creation of a Consumer Commodity Standards Board as a section of the proposed Federal Trade and Industry Commission. The Federal Trade and Industry Commission, "a semi-autonomous board under the president of the Privy Council" with administrative, advisory, investigative and regulatory powers was the most important proposal.[84]

The Select Committee and the Royal Commission were ground breaking in two respects: they were by far the most extensive and sophisticated examination of Canadian business that had yet been undertaken; and they marked a significant, although temporary, departure from the usual warm relationship between business and government in Canada.[85] This is not to suggest that big business was in any immediate danger, but its operations had been exposed to public scrutiny and the business community in Canada has always been sensitive to even the mildest of threats. Ultimately, the Royal Commission did two things: it sustained the already widespread conviction that more government regulation was needed; and it provided the Conservative government with a legislative program.

(iii) The Conversion of R.B. Bennett

There was still one ingredient missing and that was a government willing to act. A number of factors convinced R.B. Bennett, the millionaire Prime Minister, to don the mantle of the reformer. Perhaps the most important was the influence of W.D. Herridge, Bennett's brother-in-law and the Canadian representative in Washington. While in Washington, Herridge became enamoured with Roosevelt's New Deal and he began to urge Bennett to follow the President's example. In April 1934, he sent the Prime Minister a memorandum in which he shrewdly pointed out the most important achievement of the New Deal:

> This New Deal is a sort of Pandora's box, from which, at suitable intervals, the President has pulled the N.R.A. [National Recovery Act] and the A.A.A. [Agricultural Adjustment Act] and a lot of other mysterious things. Most of the people never understood the N.R.A. or the A.A.A. any more than they understood the Signs of the Zodiac, but that did not matter very much: they were all part of the New Deal, and the New Deal meant recovery, because the president has so promised....
>
> We need a Pandora's box. We need some means by which the people can be persuaded that they also have a New Deal, and that the New Deal will do everything for them in fact which the New Deal has done here in fancy.[86]

Further justification for introducing a Canadian New Deal was provided by the defeat of the Conservative government in Ontario during the summer of 1934 and the loss of four out of five federal by-elections in September. It was at about the time of the by-election losses that Herridge and R.K. Finlayson, Bennett's private secretary, began writing Bennett's New Deal radio speeches.

Bennett delivered five speeches between January 2 and January 11, 1935. In the first speech, he boldly announced his commitment to reform:

> For if you believe that things should be left as they are, you and I hold contrary and irreconciliable views. I am for reform. And, in my mind, reform means Government intervention. It means Government control and regulation. It means the end of laissez-faire.[87]

He became more specific in the next four speeches, promising an unemployment insurance plan, an Economic Council, amendments to the Companies Act, a Department of Communications, and better old age pensions. Reaction to the speeches was more favourable than one might have expected. Alvin Finkel claims that many powerful businessmen expressed their approval. Among those who supported Bennett, he mentions: the president of the Canadian Chamber of Commerce, the president of the Bank of Toronto, the president of Goodyear Tire, the president of St. Lawrence Sugar, the president of Canada Cement and F.N. Southam of Southam Publications.[88] The Montreal Gazette, the Financial Times and the Financial Post were all critical.[89] As well, several of Bennett's ministers were upset about the speeches although, in part, this was a result of his failure to consult them. In the case of C.H. Cahan, who was considered to be the representative of Montreal business interests, the critisism was directed against the substance of the speeches.

(iv) The Legislation

The fears of those who were troubled by Bennett's speeches proved to be largely groundless when the government began introducing the legislation promised by the Prime Minister. It was neither as sweeping as his speeches had suggested, nor did it implement all of the recommendations of the Royal Commission on Price Spreads and Mass Buying. Some of the legislation did conform to the Commission's recommendations: amendments were made to the Criminal Code,[90] the Live Stock Act,[91] the Weights and Measures Act,[92] the Companies Act,[93] and the Combines Investigation Act;[94] legislation was passed to create an Economic Council;[95] and the Dominion Trade and Industry Act was passed.[96] Several labour acts were passed with respect to minimum wages, the eight- hour day, a weekly day of rest and an unemployment insurance scheme.[97] These acts were worded in such a way as to comply with League of Nation draft conventions. As well, the Wheat Board was re-established and amendments were made to the Natural Products Marketing Act.[98] All of this legislation was introduced and passed in the five month period beginning at the end of January and ending in early July.

The legislation considerably increased the scope of federal regulation. Beyond that, it is difficult to generalize about the effect of the legislation. Amendments to the Weights and Measures Act gave inspectors greater authority and more clearly defined certain measures. The Dominion Trade and Industry Act created a commission (initially this was to be the Tariff Board) with the power to administer the Combines Investigation Act; investigate unfair trade practices as set out in several different acts; administer commodity standards; and recommend to the Governor in Council that price agreement be approved when "wasteful or demoralizing competition exists."[99] The amendments to the Criminal Code made it illegal for a seller to give rebates or discounts to one buyer not granted to another, or to sell at lower prices in one area than elsewhere in order to eliminate competition or to sell at an unreasonably low price in order to destroy competition.[100] Although some of the legislation was designed to protect the consumer and improve working conditions, other parts of it seem to have been designed more to protect businesses from the "unfair" practices of other businesses. There was no deliberate attempt to halt the concentration of business that had been reported by the Royal Commission.

(v) The Aftermath

Even though they had just passed an impressive amount of legislation, the Conservative government went into the 1935 election divided and weakened. Four of Bennett's ministers chose not to run again while H.H. Stevens left to form the Reconstruction Party. In addition to Stevens' party, the Co-operative Commonwealth Federation and the Social Credit party contested the election. Campaigning on a slogan of "King or Chaos", the Liberals destroyed the Conservatives who managed to elect only 40 members to their 171. The three "third" parties received more than one-fifth of the vote and elected 25 members (17 Social Credit, 7 C.C.F. and 1 Reconstruction). Stevens' party received more votes than the other two, but managed to elect only Stevens.[101] It is difficult to determine what effect Bennett's speeches and the legislation which followed had on the election. The Conservatives did poorly everywhere, but they fared worst in the Maritimes, Quebec and the Prairies. In Ontario, they won 25 seats and would have won at least 30 more if they had received all the Reconstruction votes.[102] If the Bennett New Deal had alienated the business community, the results should have appeared in Ontario where, in fact, the party was most successful. One can conclude that the depression, more than anything else, defeated the Conservatives.

Although the voters may not have been consciously passing judgement on the Bennett New Deal, this was the effect of their votes. When in opposition, the Liberals had decided it was politically unwise to oppose the legislation and instead questioned its constitutionality.[103] On assuming office, the new government referred most of the new deal legislation to the Supreme Court of Canada for an opinion on its constitutionality. The Supreme Court's judgements were in turn appealed to the Judicial Committee of the Privy Council. Their Lordships ruled that all of the labour statutes, the _Natural Products Marketing Act_, the _Employment and Social Insurance Act_ and the section of the _Dominion Trade and Industry Commission Act_ that allowed the Governor in Council to approve price or production agreements were _ultra vires_.[104] The Liberals made no attempt to salvage any of the legislation. However, they did recognize the constitutional problems which had been created by these decisions and this was one of the factors which led to the creation of the Royal Commission on Dominion-Provincial Relations in 1937.[105]

(5) Conclusion

In the 1930s, the federal government became involved in several new areas of regulation. The Canadian Radio Broadcasting Commission, the Bank of Canada, the Wheat Board and the Board of Transport Commissioners are all products of the 1930s which are still with us in one form or another. Still, it is possible to argue that regulation in the 1930s was just as important in terms of the issues that were clarified as in terms of what was accomplished. The most important issue that was clarified was the constitutional one. By the end of the decade, it was much clearer what each level of government was able to regulate than it had been ten years earlier.

The Supreme Court and the Judicial Committee of the Privy Council played a major role in shaping this division of authority. Initially, it appeared that the courts were leaning towards a large role for the federal government. In 1931, and again in 1933, provincial marketing laws were declared to be ultra vires.[106] In 1932, the Judicial Committee of the Privy Council ruled that the federal government had the authority to regulate aeronautics and radio communications.[107] It was partly as a result of these decisions that the Bennett government believed its New Deal legislation would pass constitutional scrutiny.

The 1937 decisions of the Judicial Committee of the Privy Council strictly interpreted the federal government's authority to regulate trade and commerce and foiled its attempts to use its treaty-making powers or the "peace, order and good government" clause of Section 91 to regulate matters affecting property and civil rights.[108] While the courts decided what matters the federal government could not regulate, they upheld the federal government's right to disallow or reserve provincial regulation. The King government disallowed eight Alberta statutes passed between 1937 and 1939. They dealt with matters such as licensing bank employees, declaring a one year moratorium on all debts and taxing the principal of mortgages held by non-residents.[109] Thus the overall effect of the various decisions was not to increase the area of provincial authority, but rather to compartmentalize the respective authority of the federal and provincial governments.

To a lesser extent, the relationship between business and government was another issue that was clarified. The relationship became an issue as a result of the Royal Commission on Price Spreads and Bennett's radio speeches promising reform. The business community was in a vulnerable position in the 1930s. Traditionally, it had been able to respond to attacks by pointing to the prosperity of the country and issuing dire warnings about "killing the goose that lays the golden eggs." By 1935 this defence was no longer effective. The price spreads investigation, which disclosed such things as the healthy profits made by Canada Packers during the worst years of the depression, increased the business community's vulnerability.[110] Bennett's radio speeches suggested that he was prepared to alter significantly the relationship between business and government, but when he left office, Canada Packers' profits remained high.[111] Nor did his government do anything about the mergers revealed by the Royal Commission. It did little more than insert a definition of an illegal merger into the Combines Investigation Act. This did not produce any prosecutions. (The first prosecution in a merger case did not occur until 1970.)[112] Much of the legislation that was passed in the last months of the Bennett government was designed to protect the business community from itself. The decade ended with the traditional cosy relationship between the federal government and business virtually intact.

NOTES

1. See Appendix A.

2. H.B. Neatby, William Lyon Mackenzie King: The Lonely Heights, 1924-1932 (Toronto and Buffalo: University of Toronto Press, 1963) pp. 301-302.

3. *Ibid.*, pp. 312-316.

4. See Orville John McDiarmid, Commercial Policy in the Canadian Economy (Cambridge, Mass: Harvard University Press, 1946) pp. 272-289.

5. The term "the Bennett New Deal" is merely a convenient way of describing several acts passed by the Conservative government in 1935 in an attempt to deal with the depression. It is not used to describe either the Natural Products Marketing Act or the Wheat Board Act since these acts were products of a different set of circumstances. For more information see the sources referred to in the footnotes and W.M. McConnell, "Some Comparisons of 'the Roosevelt and Bennett' New Deals," Osgoode Hall Law Journal, Vol. 9, No. 2, Nov. 1971.

6. On the origins of the Canadian Radio Broadcasting Commission, see Frank W. Peers, The Politics of Canadian Broadcasting, 1920-1951 (Toronto: University of Toronto Press, 1969); M. Prang, "The Origins of Public Broadcasting in Canada" Canadian Historical Review, Vol. XLVI, No. 1 March 1965; and Graham Spry, "The Origins of Public Broadcasting in Canada: A Comment" Canadian Historical Review, Vol. XLVI, No. 2, June 1965. On the Bank of Canada, see Linda M. Grayson, "The Formation of the Bank of Canada, 1913-1938," (Unpublished Ph.D. Thesis, University of Toronto, 1974).

7. Collapse of Wheat Prices.

Table 1	
1926	$1.46
1927	1.46
1928	1.24
1929	1.24
1930	.64
1931	.59
1932	.54
1933	.68

Table 2	
1928/29	$ .78
1929/30	1.03
1930/31	.47
1931/32	.37
1932/33	.34
1933/34	.47

The figures in Table 1 are from M.C. Urquhart and K.A.H. Buckley, Historical Statistics of Canada (Toronto: The Macmillan of Canada, 1965), p. 359. These figures represent the wholesale price for No. 1 Northern at Fort William. This is the price that is usually quoted. The figures in Table 2 are from C.F. Wilson, A Century of Canadian Grain (Saskatoon: Western Producer Prairie Books, 1978), p. 246. These figures are the average farm prices, i.e., the average of all grades sold with elevator, handling and freight charged deducted.

8. The creation of the provincial pools and the Central Selling Agency is discussed in Chapter Four.

9. Wilson, op. cit., pp. 264-284. See Chapter Four for federal regulation of the grain trade up to 1930.

10. Order-in-Council P.C. 853, April 10, 1931, appointing a Royal Commission to inquire into and report upon what effect, if any, the dealing in grain futures has upon the price received by the producer.

11. Canada, Report of the Commission to Enquire into Trading in Grain Futures, (Ottawa: King's Printer, 1931). See also, Canada, Report of the Royal Grain Inquiry Commission, (Ottawa: King's Printer, 1925).

12. The London Wheat Agreement was an agreement among the four major exporting countries, Argentina, Australia, Canada and the United States, to limit their exports to certain maximum amounts. See Wilson, *op. cit.*, pp. 275-388.

13. V.C. Fowke, *The National Policy and the Wheat Economy* (Toronto and Buffalo: University of Toronto Press, 1973, first published in 1957), p. 259.

14. Quoted by Wilson, *op. cit.*, p. 460.

15. Special Committee on Bill 98, Canadian Grain Board Act, *Minutes of Proceedings and Evidence*. The Committee was appointed on 14 June 1935 and reported on 2 July 1935.

16. Statutes of Canada, *The Canadian Wheat Board Act, 1935* 25-26 Geo. V, c. 53. See Wilson, *op. cit.*, pp. 467-474; and H.B. Neatby, *William Lyon Mackenzie King: The Prism of Unity, 1932-1939* (Toronto and Buffalo: University of Toronto Press, 1976), pp. 104-108 for details on the passage of the legislation.

17. It lost about $12 million on the 1935/36 crop and over $60 million on the 1938/39 crop. Wilson, *op. cit.*, p. 538 and p. 565.

18. Quoted by Neatby, *William Lyon Mackenzie King: The Prism of Unity*, *op. cit*., p. 167.

19. Order-in-Council P.C. 1577, June 27, 1936, appointing Royal Grain Inquiry Commission.

20.

> I am therefore of the opinion that under what may be called normal conditions - open markets in the United Kingdom, a fair relationship between world supply and import demand, and no danger clouds on the immediate horizon - the

> Government should remain out of the grain trade, and our wheat should be marketed by means of the futures market system (under supervision), and encouragement given to the creation of co-operative marketing associations or Pools.

Canada, Report of the Royal Grain Inquiry Commission (Ottawa: King's Printer, 1938) p. 189.

21. Public Archives of Canada, King Papers, G.A. Morris and D.E. Murphy to W. Euler, 4 June 1938 pp. 218118-218120. Euler was Minister of Trade and Commerce.

22. Wilson, *op. cit.*, pp. 597-603.

23. Statutes of Canada, An Act to amend the Canadian Wheat Board Act, 1939, 3 Geo. VI, c. 39.

24. Statutes of Canada, The Prairie Farm Assistance Act, 1939, 3 Geo. VI, c. 50.

25. Statutes of Canada, The Wheat Co-operative Marketing Act, 1939, 3 Geo. VI, c. 34.

26. Statutes of Canada, The Grain Futures Act, 1939, 3 Geo. VI, c. 31. For accounts of the 1939 legislation, see Wilson, *op. cit.*, Chapter 27; and G. Britnell, "Dominion Legislation Affecting Western Agriculture, 1939" Canadian Journal of Economics and Political Science, Vol. VI, No. 2, May 1940.

27. There was some eastern support for the Wheat Board. Both the president of the Bank of Montreal and the Monetary Times realized that the Wheat Board was a necessary evil. Alvin Finkel, Business and Social Reform in the Thirties (Toronto: James Lorimer & Company, 1979), p. 72.

28. Grant Vinning, "Regulation and Regulatory Modes in Canadian Agriculture" (Unpublished M.A. Thesis, Carleton University, 1978) p. 3. The discussion that follows is based heavily on Vinning's thesis.

29. Statutes of Canada, The Natural Products Marketing Act, 1934, 24-25 Geo. V, c. 57. Statutes of British Columbia, Produce Marketing Act, 17 Geo. V, c. 54.

30. Vinning, op. cit., pp. 129-140.

31. Ibid., p. 143.

32. James Q. Wilson has suggested an approach to understanding regulation that concentrates on the distribution pattern of costs and benefits. The situation in British Columbia was an example of a case of concentrated benefits (for the producers) and diffused costs (for consumers). Regulation that results from this set of circumstances has a number of characteristics: reduction of price competition; limitations on entry; and the organized beneficiary having some influence on the regulatory agency. James Q. Wilson, "The Politics of Regulation" in James W. McKie (ed.) Social Responsibility and the Business Predicament: Studies in the Regulation of Economic Activity James (Washington: The Brookings Institute, 1974), pp. 141-142.

While the British Columbia government was able to meet the fruit growers' demands, there was so much opposition to the attempt to include milk in the act that the idea was dropped. Milk has often been perceived to be a necessity and thus somehow different from other agricultural products. The costs of including milk would have been equally diffused, but considerably more visible. See Vinning, op. cit., pp. 150-151 for the attempt to regulate the marketing of milk.

33. Vinning, op. cit., p. 148.

34. Ibid., p. 147.

35. Ibid., p. 147. Orientals were involved in many of the breaches of the Act, Ibid., p. 152. On the larger issues of racism in British Columbia, see W. Peter Ward, White Canada Forever: Popular Attitudes and Public Policy Towards Orientals in British Columbia (Montreal: McGill-Queen's University Press, 1978).

36. Lawson v. Interior Tree-Fruits and Vegetable Committee of Direction, [1931] S.C.R. 357.

37. In re Grain Marketing Act, 1931 [1931] 2 W.W.R. 146.

38. Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd., [1933] D.L.R. 82.

39. Prior to his election to the House of Commons in 1930, Weir had been a member of the Saskatchewan Wheat Pool, the Cooperative Live Stock Pool and the Saskatchewan Registered Seed Grain Pool, Vinning, op. cit., p. 175.

40. Vinning, op. cit., p. 172.

41. Ibid., pp. 192-193.

42. Ibid., p. 199.

43. Finkel, op. cit., pp. 45 ff.

44. The Natural Products Marketing Act, 1934, s. 5.

45. Ibid., s. 4.

46. Quoted in J.H.R. Wilbur (ed.) The Bennett New Deal: Fraud or Portent (Toronto: The Copp Clark Publishing Company, 1968), p. 42

47. Ibid., p. 43.

48. Vinning, op. cit., pp. 252-253.

49. Reference re the Natural Products Marketing Act, 1934, and its Amending Act, 1935 [1936] S.C.R. 398.

50. Attorney-General for British Columbia v. Attorney-General for Canada, [1937] A.C. 377 (P.C.).

51. Shannon v. Lower Mainland Dairy Products Board [1938], A.C. 708 (P.C.).

52. In 1936, British Columbia passed the Natural Products Marketing (British Columbia) Act, New Brunswick followed with The Natural Products Act in 1937 and two years later, Manitoba passed the Natural Products Marketing Act.

53. Vinning, op. cit., p. 270.

54. Ibid., p. 270.

55. Ibid., p. 170.

56. "The Natural Products Marketing Act of 1934 was in part the result of significant business pressures." Finkel, op. cit., p. 51.

57. Vinning, op. cit., Appendix pp. 3-11.

58. Ibid., Appendix pp. 11-13.

59. Ibid., Appendix pp. 29-31.

60. Statutes of Canada An Act to amend the Natural Products Marketing Act 1934, 1935 25-26 Geo. V, c. 64.

61. Quoted by Finkel, op. cit., p. 31.

62. See H.V. Nelles, The Politics of Development: Forests, Mines and Hydro-Electric Power Development in Ontario, 1849-1941 (Toronto: Macmillan of Canada, 1974) pp. 454-462.

63. F. Hankin and T.W.L. MacDermot, Recovery by Control (Toronto and Vancouver: J.M. Dent & Sons Ltd., 1933). See below.

64. F.R. Scott, "The Nineteen Thirties in the United States and Canada" in V. Hoar (ed.) The Great Depression: Essays and Memoirs from Canada and the United States (Vancouver, Toronto and Montreal: Copp Clark Publishing Company, 1969), p. 170.

65. Ibid., p. 170.

66. See League for Social Reconstruction Research Committee, Social Planning for Canada (Toronto: Thomas Nelson & Sons Limited, 1935).

67. Hankin and MacDermot, op. cit., pp. 326-327.

68. Ibid., p. 268.

69. For a discussion of corporatism, see Chapter One.

70. Hankin and MacDermot, op. cit., p. 178.

71. Ibid., pp. 338-339.

72. Michiel Horn, "Academics and Canadian Social and Economic Policy in the Depression and War Years" Journal of Canadian Studies, Vol. 13, No. 4, Winter 1978-79, pp. 7-8.

73. Stephen Leacock, "What is Left of Adam Smith?", Canadian Journal of Economics and Political Science, Vol. I, No. 1, 1935, p. 45.

74. Michael Bliss, A Canadian Millionaire: The Life and Times of Sir Joseph Flavelle, Bart. 1858-1939 (Toronto: Macmillan of Canada, 1978), p. 487.

75. H.A. Innis, "Recent Developments in the Canadian Economy" in Essays in Canadian Economic History, (Toronto: University of Toronto Press, 1956), p. 307.

76. The Select Committee was appointed on 2 February 1934 and on 30 June 1934 its recommendation that it should be allowed to continue as a Commission was agreed to by the House of Commons. See D.F. Forster, "The Politics of Combines Policy: Liberals and The Stevens Commission," The Canadian Journal of Economics and Social Science, Vol. XXVIII, No. 4, November 1962, pp. 511-526.

77. Quoted by J.R.H. Wilbur, H.H. Stevens, 1878-1973 (Toronto and Buffalo: University of Toronto Press, 1977), p. 105.

78. For the events leading up to his speech and the reaction to it, see Ibid., pp. 105-111.

79. Order-in-Council P.C. 1461, July 7, 1934. The membership of the Royal Commission on Price Spreads was the same as that of the Select Committee of the House of Commons.

80. Canada, Report of the Royal Commision on Price Spreads, (Ottawa: King's Printer, 1935), p. 8.

81. Ibid., p. 28.

82. Ibid., p. 25.

83. Ibid., p. 275.

84. Ibid., "Summary of Recommendations" pp. xviii-xxv.

85. In comparison, the Report of the Royal Commission on Corporate Concentration (Ottawa: Queen's Printer, 1978) was a much more generous treatment of big business. For a critique of the Report see P. Gorecki and W.T. Stanbury (eds.) Perspectives on the Royal Commission on Corporate Concentration (Montreal: Institute for Research on Public Policy, 1979).

86. Excerpts of letters from Herridge to Bennett can be found in The Bennett New Deal, op. cit., W.D. Herridge to R.B. Bennett, April 12, 1934, pp. 67-70.

87. Excerpts from the radio speeches can be found in The Bennett New Deal, op. cit., pp. 81-90.

88. Finkel, op. cit., p. 37. See also Donald Forster and Colin Read, "The Politics of Opportunitism: The New Deal Broadcasts," Canadian Historical Review, Vol. LX, No. 3, September 1979, pp. 324-349.

89. Ibid., p. 38. See also Finkel's thesis, "Canadian Business & the 'Reform' Process in the 1930's" (Ph.D. Thesis, University of Toronto, 1976), p. 127.

90. Statutes of Canada, An Act to amend the Criminal Code, 1935, 25-26 Geo. V, c. 56.

91. Statutes of Canada, An Act to amend the Live Stock and Live Stock Products Act, 1935, 25-26 Geo. V, c. 42.

92. Statutes of Canada, An Act to amend the Weights and Measures Act, 1935, 25-26 Geo. V, c. 48.

93. Statutes of Canada, An Act to amend the Companies Act, 1934, 1935, 25-26 Geo. V, c. 55.

94. Statutes of Canada, An Act to amend the Combines Investigation Act, 1935, 25-26 Geo. V, c. 54.

95. Statutes of Canada, An Act to establish an Economic Council, 1935, 25-26 Geo. V, c. 19.

96. Statutes of Canada, An Act to establish a Dominion Trade and Industry Commission, 1935, 25-26 Geo. V, c. 59.

97. Statutes of Canada, The Weekly Rest in Industrial Undertakings Act, 1935, 25-26, Geo. V, c. 14; The Employment and Social Insurance Act, 1935, 25-26, Geo. V, c. 38; The Minimum Wages Act, 1935, 25-26 Geo. V, c. 44; and The Limitations of Hours of Work Act, 1935, 25-26, Geo. V, c. 63.

98. The Canadian Wheat Board Act, 1935, and An Act to amend the Natural Products Marketing Act, 1934, 1935. See above.

99. An Act to establish a Dominion Trade and Industry Commission, 1935, s. 14.

100. An Act to amend the Criminal Code, 1935, s. 9.

101. Wilbur, *H.H. Stevens, 1878-1973*, *op. cit.*, p. 205.

102. *Ibid.*, p. 206.

103. H.B. Neatby *William Lyon Mackenzie King: The Prism of Unity*, *op. cit.*, pp. 90-97, and 100-104.

104. *Attorney-General for Canada* v. *Attorney-General for Ontario*, [1937] A.C. 327 (P.C.) (Labour Conventions Case). *Attorney-General for British Columbia* v. *Attorney-General for Canada and Others*, [1937] A.C. 377 (P.C.) (N.P.M.A.). *Attorney-General for Canada* v. *Attorney-General for Ontario*, [1937] A.C. 355 (P.C.) (Employment and Social Insurance Act Reference). *Attorney-General for Ontario* v. *Attorney-General for Canada and Others*, [1937] A.C. 405 (P.C.) (Dominion Trade and Industry Commission Act Reference).

105. Order-in-Council, P.C. 1908, August 14, 1937. The *Report of the Royal Commission on Dominion-Provincial Relations*, frequently referred to as the Rowell-Sirois Report, was tabled in 1940.

106. See Footnotes 29 and 30.

107. *In re Regulation and Control of Aeronautics in Canada*, [1932] A.C. 54 (P.C.). *In re Regulation and Control of Radio Communications in Canada*, [1932] A.C. 304 (P.C.).

108. In 1976 the Surpreme Court upheld the validity of the *Anti-Inflation Act* as a legitimate use of the peace, order and good government clause. *Reference re Anti-Inflation Act* [1976] 2 S.C.R. 373. The economic situation in 1976 was less serious than during the depression, but the

Anti-Inflation Act was a temorary measure. See Peter H. Russell, "The Anti-Inflation case: the anatomy of a constitutional decision" Canadian Public Administration Vol. 20, No. 4, Winter 1977, pp. 633-665.

109. Neatby, William Lyon Mackenzie King: The Prism of Unity, op. cit., pp. 227-231 and 266-267.

110. Canada Packers was bigger than all of the other meat-packing firms combined. Its profits average 8.9% a year during the worst years of the depression (1929-1933). It is suggested that its profits were probably even greater than indicated by company records. Report of the Royal Commission on Price Spreads, p. 57.

111. At times during his radio speeches, Bennett sounded like a member of the C.C.F.:

> Selfish men and this country is not without them, - men whose mounting bank rolls loom larger than your happiness, corporations without souls and without virtue - those fearful that this government might impinge on what they have grown to regard as their immemorial right of exploitation, will whisper against us. They will say that this is the first step on the road to socialism. We fear them not.

From The Bennett New Deal, op. cit., p. 89.

112. See W.T. Stanbury and G.B. Reschenthaler, "Benign Monopoly: Canadian Merger Policy and the K.C. Irving Case," Canadian Business Law Journal, Vol. 2, No. 2, 1977.

Chapter 6

REGULATION IN A FEDERAL STATE

In recent years regulatory issues have become identified with the problem of federalism.[1] The regulation of cable television, the control of natural resources and energy pricing have become standard topics of federal-provincial conferences. However, the difficulties of regulating economic activities in a federal state are not new.[2] What has changed is that as federal-provincial relations have become both more open and more formal (Ritualized federal-provincial conferences, the growth of provincial Departments of Federal-Provincial Relations and the creation of the Federal-Provincial Relations Office in Ottawa are obvious manifestations.), the difficulties have become more visible. As well, the specific issues causing the difficulties have changed. The present differences of opinion over oil pricing and cable television are simply new forms of an old disagreement. The interaction between regulation and federalism is a double-edged sword. The federal structure makes it more difficult to regulate while, at the same time, regulatory issues can adversely affect federal-provincial relations.[3]

(1) Regulating Resource Development

(i) The Division of Powers

Control of natural resources and the regulation of their use has been such a contentious issue because of the importance of the resources.[4] Dating back more than three hundred years to the arrival of the first fur traders and fishing fleets, the prosperity of Canada has depended on the exploitation of staples. The interventionist state arrived at the same time. By a Royal charter granted in 1670, the Hudson's Bay Company was granted the sole right to trade in the area drained by rivers flowing into Hudson's Bay while the fishing fleets were subject to numerous regulations.[5] Although the fur trade gave way to the square timber trade and later the pulp and paper industry and now the fishing industry is slowly being replaced by offshore drilling,[6] the state has remained.[7] However, the emergence of new staples has produced periodic political restructuring.

When the federal structure was created in 1867 it became necessary to decide which level of government would be given control over natural resources. The provinces acquired the ungranted lands (Crown Lands) within their borders at the time of Confederation. Section 92 of The British North America Act specifically gave the provinces the authority to legislate in connection with, "The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon." An exception was made when Manitoba, Alberta and Saskatchewan became provinces in 1870, 1905 and 1905, respectively. Until 1930 Crown Lands in these provinces remained under the control of the federal government to allow it to fulfill the national policy. With this exception, the federal government's control over natural resources was limited and indirect. As a result of its jurisdiction over navigation and shipping it was able to exercise some authority over water resources. When the water resources were part of an international waterway such as the St. Lawrence or the Columbia River the federal government's authority was increased. The federal government could indirectly affect the use of resources by regulating interprovincial and export trade under Section 91 of the British North America Act. Since one of the characteristics of staple production has been a dependence on export markets, the ability to control exports was potentially a powerful regulatory tool. The federal government was also given the power of disallowance.[8] In theory, it could thwart provincial attempts to regulate simply by disallowing the relevant act.

(ii) The Struggle for Equality

In the estimation of Sir John A. Macdonald, Canada's first Prime Minister, the provincial governments were mere appendages of Ottawa, of no more importance than a municipal government.[9] Macdonald frequently treated them as such. Not surprisingly, his government became involved in a number of disputes with the provinces. One of the first major disagreements between Ottawa and a province arose over Ontario's attempt to regulate the use of streams. The events that produced An Act for protecting the public interest in Rivers, Streams and Creeks[10] are most interesting. In 1878, a Mr. Caldwell, a reputed Liberal supporter ran his logs down a stream which had been improved for this purpose by a Mr. McLaren, who was reputed to be a Conservative supporter. (This was an era when political partisanship was much sharper and of greater economic importance.) Caldwell did not pay the promised fee nor did he do so in 1879 when he again floated logs down the stream. In the following year McLaren obtained an injunction prohibiting anyone from using the stream. The case went to the courts where it was argued by two prominent Members of Parliament, one a Liberal, the other a Conservative. Before a decision was reached, the Liberal government in Ontario passed the Act referred to above. It gave all persons the right to use all rivers, creeks and streams and provided that tolls for the use of improved streams were to be set by the Cabinet. The Act was disallowed by the Conservative government in Ottawa as were two further enactments of it. Macdonald justified his government's action by calling the Act, "a wretched, flimsy and transparent device.... It had the effect of depriving McLaren of his property under the pretence that it was in the public interest. Nothing more contemptible or sinister could be done by a Government or Legislature."[11] Caldwell eventually won in the courts[12] and Ontario won the disallowance battle. The fourth time the Act was passed the federal government allowed it to stand.[13]

The dispute caused by Caldwell's logs was a small, but significant, part of the provinces' struggle for equality. It was significant for two reasons: it strengthened the provinces' right to regulate with respect to water resources; and it demonstrated that there were political limits to the federal government's disallowance power. The limits were more clearly established by the end of the 1880s as a result of Manitoba's repeated attempts to grant charters to railway companies in defiance of the monopoly granted to the Canadian Pacific Railway by the federal government. After disallowing severals acts, the federal government reluctantly decided it was necessary to abandon the monopoly provisions. Thereafter the federal power of disallowance was used more sparingly.[14] Acknowledgement that the provincial governments were equal in status to the federal government came in an important Judicial Committee of the Privy Council decision in 1892:

> The object of the [B.N.A.] Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy.... in so far as regards those matters which, by Section 92, are specifically reserved for provincial legislation, the legislation of each province continues to be free from the control of the Dominion, and as supreme as it was before th passing of the Act.[15]

The decision did not alter the relationship between the federal and provincial governments. Its importance was more symbolic, it marked the triumph of the provincial rights campaign.[16]

(iii) Encouraging Development

The provinces' victory could not have come at a more propitious time. Canada soon experienced a period of unprecedented prosperity in which the provinces shared fully. The term, "the wheat boom," which has been used to describe this period (1896-1913) is unfortunate since it obscures the contribution that other staples made to the Canadian economy.[17] This was particularly true in Quebec and Ontario where the hydro-electric and pulp and paper industries emerged at the same time as mining took on a new importance.[18] We have already described the introduction of regulation in response to the development of the wheat economy,[19] now we will look at the ways in which some of the other staple industries were regulated.

The regulation of the forest industry, hydro-electricity and mining differed significantly from the regulation of the wheat economy. Two important reasons for this can be suggested. The first is the size of the unit of production. Farms at that time were small, numerous and each produced only a tiny proportion of the total production. Agriculture was as close to a perfectly competitive industry (in the absence of regulation such as marketing boards) as one is likely to find. Mines, hydro-electric plants, and pulp and paper plants are each considerably larger and a fairly small number account for a large proportion of industry output. In the case of hydro-electricity, natural monopoly conditions would easily prevail in a given geographic area. Quite different rationales are used to justify regulating competitive industries than those used to justify regulating industries in which a single company can influence price. As a result, different types of regulation are introduced. Most agricultural regulation is, in fact, regulation for agriculture, i.e., designed to benefit farmers even at the expense of consumers. The second is the ownership of the resource being utilized. The land on which the farmer grows his wheat is almost invariably owned by the farmer. The water used to produce hydro-electric power and the land from which timber is cut and minerals extracted is often (in Canada at least) owned by a government. In the second situation there is an obvious justification for introducing regulation to protect the public's very tangible interest. In addition, since the state owns the resource it can impose regulations and guarantee compliance, if it so desires, by threatening to withold the use of the resource.

All too often the provinces have regarded their resources simply as sources of revenue and ignored the way in which they were being utilized.[20] Even when they were moved to impose regulations it was not always done to protect the "public interest."[21] A case in point was the ban on the export of sawlogs imposed by the Ontario government in 1898.[22] This was a reaction to changes in the American tariff of the previous year that established a duty on lumber while allowing sawlogs into the United States duty-free. Ontario lumbermen were hit the hardest by this action. When they were unable to convince the federal government to retaliate they turned to the provincial government. Here they were successful. The Ontario government was able to control the export of sawlogs by forcing all timber operators using Crown Lands to saw their logs in Ontario. Ottawa prudently decided not to disallow. In 1900 the Ontario government extended the regulation to include pulp logs.[23] While the people of Ontario as a whole benefited from the export bans insofar as they created more employment in the province, it was the lumbermen who benefited the most. The export restrictions were primarily designed to encourage economic development rather than prevent abuses. In this sense they were no different from other actions taken by the government to encourage development. These actions ranged from the construction of the Temiskaming and Northern Ontario Railway to the purchase of two diamond drills which were rented out to mining developers.[24]

The ban on the export of sawlogs and pulp logs was a success, particularly after Quebec imposed similar restrictions in 1909.[25] Ontario's attempt to apply a similar "manufacturing condition" to nickel ore was a failure. Again action by the provincial government was the second choice. Initially, an attempt was made to convince the federal government to impose an export duty on unrefined ore. Among the people pressuring the Liberal government were several prominent Liberals, one of whom was the Attorney-General of Ontario. Their interest was pecuniary, they wanted to establish a Canadian nickel-steel industry. When the federal government refused to do anything they turned to the Ontario government. In 1900 the Ontario government amended the Mines Act establishing a system of license fees.[26] A fee of $60 per ton was set for nickel which was refundable if the ore was refined in Canada. The amendment never went into effect. In the face of threats from the American parent company to close the Sudbury mines and from Ottawa to disallow what it interpreted as an unconstitutional attempt to regulate trade the provincial government decided not to proclaim the Act.[27]

These few examples demonstrate how the regulatory process can be affected by federalism. The role played by interest groups is particularly interesting. According to Christopher Armstrong and H.V. Nelles, when one level of government failed to give them the regulation they wanted they turned to the other level of government. However, it is frequently the case that when one interest group benefits, another suffers. If the offending legislation was provincial, the aggrieved interest group turned to the federal government for disallowance.[28] Occasionally, as with the amendment to the Ontario Mines Act, the threat of disallowance was enough to make the Province back down. Regardless of the outcome these various ploys placed a strain on federal-provincial relations.

(iv) Regulation vs. Public Ownership: The Case of Hydro-Electric Development

(a) The Ontario Example

Except for its short-lived ownership of a mine in Northern Ontario (1906-1909), the Ontario government's participation in the development of the province's mineral and forest resources consisted of granting mineral rights, and timber limits, providing direct financial assistance, building roads and railways and introducing regulations to ensure domestic processing. The actions of the Ontario government did not differ markedly from those of the other provinces. It was primarily in the development of hydro-electric resources that its actions violated the national norms of the time.

We have already mentioned some of the rationales for regulating resource development. However, there are some respects in which the production of hydro-electric power differs from the production of pulp and paper, lumber or metallic minerals. The consumer is more likely to take an interest in the price of hydro-electric power because he (in addition to industrial users) uses it directly. Thus the public is more likely to demand regulation of monopoly suppliers of this essential service. At the same time, the task of regulating price is made difficult by the fact that the cost of producing power at one site might differ significantly from the cost at another site and the fact that each site is subject to declining unit costs up to capacity. The nature of the supply is another complicating factor. Hydro-electric power cannot be stored, it has to be consumed as it is produced. While the supply is relatively constant the demand is subject to peak periods. Furthermore, the fixed costs of electricity generation are very large relative to variable costs. Monopoly power and the shape of its cost curves encourage hydro companies to practice price discrimination. The result is that large industries pay considerably less for power than do individual consumers. One of the tasks of regulation is to ensure that this price discrimination is not too great.

The Ontario government's initial involvement in the production of hydro-electric power came about for reasons that had nothing to do with the problems just discussed. In the 1880s it was decided that there should be a park at Niagara Falls. The problem of financing the operation of the park was solved by granting an American company the exclusive right to produce power on the Canadian side of the falls for an annual rental of $25,000. The company relinquished its exclusive right to the Falls when it failed to begin construction as agreed. Another franchise was granted to a second American company in 1900 and two years later both companies began work on their plants. They were soon joined by a Canadian company controlled by three Toronto financiers who also happened to control the Toronto Electric Light Company and the Toronto street railway system. Both were monopolies with unenviable reputations.[29] Even with three different companies producing power, few people believed that competition among the companies would result in cheap power.

It was this skepticism that soon made the power question the most important political issue in the province. There were several reasons for this. First, there was the example of what hydro-electric power had done for industry on the American side of the river where it had been available since 1895. Second, there was a concern that most of the power would be exported to the United States. Then there was the competition between the industrial centres of southwestern Ontario, Berlin (Kitchener), Waterloo, Guelph, London, etc. and Toronto. Manufacturers in the former cities wanted cheap power in order to compete with Toronto. Finally, in 1902 strikes closed the Pennsylvania coal mines causing shortages and driving up prices. Hydro-electric power began to look like an attractive alternative. These considerations did not produce a demand for regulation; instead, they produced a demand for public ownership.

The public power movement was largely the creation of a few manufacturers, municipal politicians and newspapers from centres in south-central and south-western Ontario. It soon won the support of a large segment of the public as well as that of local boards of trade and the Canadian Manufacturers' Association.[30] The goal of the public power movement was a modest amount of government ownership sufficient to guarantee the province all the hydro-electric power it needed at reasonable rates. Preferably, the province would build and operate a distribution system with power purchased from the private companies, or, at the very least, public power advocates wanted the province to allow the municipalities to band together to buy and distribute power. The Liberal government preferred the latter alternative. In 1903 it passed *An Act to provide for the Construction of Municipal Power Works and the Transmission, Distribution and Supply of Electrical and other Powers and Energy*[31] which permitted municipalities to become involved in the business of selling power to both residential and industrial users.

In 1905, the Conservatives were returned to power in Ontario for the first time since 1871. The new government, led by James Whitney, was more enthusiastic about the possibilities of government ownership, but not quite as committed as Whitney's claim that, "The waterpowers of Niagara should be as free as air," would suggest. In 1906 the Whitney government passed legislation creating the Hydro-Electric Power Commission of Ontario.[32] The Commission was given extensive powers. It could purchase, lease or expropriate:

> the lands, works, plant and property of any company or person owning, using and developing or operating lands, waters, water privileges, or works, plant and machinery for

> the development of any waters privilege or water power for the purpose of generating electrical power or energy or for the transmission thereof in the Province of Ontario and to develop and supply electrical power or energy.[33]

It could also order any company to provide it with as much power as it required. One of the most controversial sections of the Act provided that:

> No action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office without the consent of the Attorney-General for Ontario.[34]

This provision was designed to protect the Commission from the sustained attack launched against it by the private power companies. The federal government was pressured to disallow, the Act was challenged in the courts, and the companies even tried to discredit the province's credit rating abroad.[35]

The attitude of the power companies, and the Canadian company (the Electrical Development Company) in particular, made compromise difficult: the appointment of Adam Beck, a London manufacturer and Minister without Portfolio, as the first Chairman of the Commission, made compromise impossible. Beck was fiercely committed to public power and he used his dual position as Chairman and Cabinet minister to increase his own authority and that of the Commission. The Commission gradually became a powerful regulatory body as well as a transmission and distribution system. (Eventually it began to generate power.) It was given the authority to order telegraph, telephone, electric light and power companies to place their wires underground, when the Commission was of the opinion that their overhead wires were a hazard.[36] In 1916 The Water Power Regulation Act[37] was passed allowing the Cabinet to appoint an inspector with the authority to inspect generating plants to determine the amount of water they were using and whether this exceeded their allotment. If irregularities were found the inspector was empowered to close the plant. The Commission was appointed as the inspector. The Act allowed Beck to harass the private companies. He did not want to regulate them; he wanted to get rid of them.

In the same year this Act was passed, the Commission purchased one of the American companies at Niagara and it was given the necessary authority to construct its own plant.[38] The victory of the public power movement was now complete. During the 1920s the Commission began to produce more than half of Ontario's power. By 1930 it was the largest hydro-electric system in the world and well on its way to becoming the monopoly supplier of electricity in Ontario.[39]

The battle to create Ontario Hydro has been interpreted as a struggle between two different groups of businessmen (with the provincial government on the side of the less powerful). Nelles has argued that, "the power question pitted the haute against the petite bourgeoisie of Ontario."[40] Another account escalates the struggle to the international level, "The conflict pitted the small industrialists of towns such as London, Berlin and Hamilton against the 'robber barons' of Montreal, London and New York...."[41] Such an interpretation seems accurate. However, even though it may not have been recognized at the time, it was also a contest between two different means of controlling public utilities. The goal of the public power movement - cheap and abundant power - could have been achieved through public regulation of private enterprise. The possibility did exist. As an alternative to selling power to the Commission, the privately-owned Ontario Power Company proposed that it would build a transmission system and sell the power at rates set by the Commission.[42] Some prominent members of the financial community preferred regulation. Byron Walker, the General Manager of the Bank of Commerce, wanted the federal government to regulate the industry with the hope that this would weaken the demand for public ownership:

> My own opinion formed long before I heard that the Dominion Government were giving the matter consideration is that the Federal Government should take hold of the power situation throughout Canada, and should give the people the same assurance of fair play that they have in the Railway Commission as applied to railways.[43]

There were obvious constitutional problems which made it almost impossible for the federal government to act,[44] but there was nothing preventing the Ontario government from regulating the industry. In fact, in 1906, in the same year it created the Hydro Commission it established the Railway and Municipal Board.[45] The Board was a regulatory body with the powers of a Court of Record. It had the authority to make regulation with respect to the operation of steam, electric and street railways, including the authority to approve rate changes. It had somewhat less authority over utility companies.[46] The Board could have been given the necessary authority to regulate the power companies; instead, the Whitney government chose to create the Power Commission.

It is not particularly easy to explain why public ownership triumphed over regulation. The argument that the public power advocates did not trust regulation is unconvincing since many of them had supported the creation of the federal Board of Railway Commissioners at about the same time. Two different arguments have been put forth which emphasize the role of ideology in the creation of Ontario Hydro. One historian has argued that the Conservative government of James Whitney was "Progressive" in the sense that the term has been used to describe the period. Progressivism has traditionally been interpreted as a response to the socio-economic changes produced by the twin forces of industrialization and urbanization. Hostility to big business ("trust-busting") has often been seen as its most obvious characteristic. This is the way in which Charles Humphries has viewed the Whitney government:

> "Progressive" Conservatism arose out of the changing nature of Ontario and its society and out of the response of a political party in tune with the times. It reflected the fact that the party owed few favours to those in high financial circles and it held out promises to the small manufacturer and the urban worker.[47]

George Grant and Gad Horowitz (men of quite different political persuasions) attribute the creation of Ontario Hydro to the lingering influence of pre-liberal conservatism (Tory collectivism) rather than to the influence of post-liberal progressivism.[48] According to Horowitz:

> Canadian and British Conservatives have been able to rationalize their grudging acceptance of the welfare state and the managed economy by recalling their pre-capitalist, collectivist traditions.[49]

Nelles denies that ideology was important. In fact, he argues that it was the absence of ideology that made Ontario Hydro possible. Its creation was a purely pragmatic response to a specific problem.[50]

Attractive as they may seem, these arguments are not very helpful. The introduction of regulation can be just as ideological, or, just as pragmatic as public ownership. In order to explain why public ownership was chosen over regulation it is necessary to consider the characteristics of the industry and the social context in which the decisions were made. The production of hydro-electric power was an exciting new industry which, for reasons already discussed, captured the imagination of Ontarians. Nelles refers to it "as a symbol of the anxiously awaited new industrialism."[51] The people of Ontario, and particularly the manufacturers, wanted cheap power and they wanted it as soon as possible. Public ownership seemed to offer two advantages: it promised a more rapid expansion of service and it offered the possibility of greater social control.

Public ownership was also practical. Because it was a new industry the initial expenditure was not as great as it would have been if the government had decided to nationalize an existing industry. It was also possible for the government to become involved in a piece-meal fashion. In began by building transmission lines to distribute power produced by private companies and only became involved in the production of power when the future of the industry was assured. One also has to take the social environment into consideration. Like electric power itself, the idea of public ownership took on symbolic importance. It was an idea whose time had come.

Public ownership lived up to many of the high expectations its advocates had of it. Service was rapidly expanded and, although comparisons are difficult, rates were probably lower than in either Quebec or New York State.[52] In one respect it was a failure. Public ownership did not guarantee accountability to the Power Commission owners, or even to the Legislature. Nelles clearly demonstrates that, for several years following its creation, the Power Commission was run with a cavalier disregard for the norms of responsible government. Between 1911 and 1915 its expenditures exceeded the Legislature's authorizations by more than $4 million[53] The dangers posed by its size and arrogant behaviour were recognized only by the Commission's most determined critics. Writing in 1925, Professor James Mavor of the University of Toronto charged that:

> The success of the scheme to arouse the Municipalities to play upon their newly discovered enthusiasm for "cheap power" was so great and the effect of monster deputations so overwhelming that from the Spring of 1906 onwards, the real Government of Ontario was the Hydro-Electric Commission....[54]

Government ownership may have offered cheap power; but, as this quotation suggests, it did not guarantee accountability.

(b) The Manitoba Example

In many respects, the situation in Manitoba was very similar to that in Ontario. As in Ontario, there was a public power movement that wanted cheap abundant power in order to encourage industrial development. The movement was again led by manufacturers, merchants and local politicians who feared that the private company, the Winnipeg Electric Railway Company, would use its monopoly position to charge exorbitant rates.[55] There were, however, two significant differences. In Manitoba, there was only one important industrial centre (not a number of competing ones) and the federal government retained control over natural resources. Because of these differences, particularly the former, the public power movement did not duplicate the success of its Ontario counterpart. Instead, it consisted mainly of the demand that the City of Winnipeg should produce and distribute power in competition with the private company. Accordingly, in 1906 the provincial government authorized the City to develop and sell power.[56] Five years later, the city plant went into operation.

Like the creation of the Ontario Hydro-Electric Power Commission, the establishment of a publicly-owned power company in Winnipeg has been explained in terms of the triumph of self-interested businessmen. (One is reminded of Kolko's analysis of American regulation.) The suggestion that there was any hostility to private enterprise has been rejected. In his history of Winnipeg, Alan Artibise argues:

> Only after the civic and business leaders realized that a powerful monopoly existed in their midst, and that this monopoly threatened to keep all the profits to itself, did they move in another direction. Thus, paradoxically, it was the very success of private enterprise that led to

> municipal ownership.... It was beyond the capacity of Winnipeg's governing commercial elite to think in terms of a public environment and care for all men, not just successful men. Their first duty remained the private search for wealth, and public ownership merely served in this one instance as the best means of achieving that goal.[57]

In arguing that public ownership was a product of pragmatism rather than ideology, Artibise underestimates the support for the principle of public ownership. It is difficult to ignore the evidence. By 1912 the City of Winnipeg owned stone quarries, gravel pits, an asphalting plant and the waterworks system, in addition to the hydro-electric plant. The provincial government owned the telephone system and almost 200 grain elevators. It was considering demands for a province-wide, publicly-owned hydro-electric system. The enthusiasm for public onwership in Manitoba was not limited to Winnipeg businessmen. It was an idea that had widespread support throughout the province.

If the commitment to public ownership was greater in Manitoba it becomes necessary to explain why public power accounted for less than one-half of the total amount of electricity produced in 1930 (and this proportion was falling) while Ontario Hydro was producing more than three-quarters of that province's power.[58] Several factors were involved, one of which was the success of regulation. In Ontario, regulation was used by Beck to strengthen the position of the Power Commission; in Manitoba regulation was used to mediate disputes between utility companies and municipalities. The Manitoba Public Utilities Commission was created in 1912 because of an on-going dispute between the City of Winnipeg and its power company and the Winnipeg Electric Railway Company.[59] The private company refused to sell out to the City and it insisted on its right to distribute power within its boundaries. When the two sides could not reach an agreement, the province announced its intention to create a utilities commission. The

Public Utilities Commission had jurisdiction over all private utility companies and over publicly-owned companies on a voluntary basis. It was given the power to fix "reasonable rates", to replace those it judged unjust, "unjustly discriminatory" or "preferential" and wide power with respect to the erection of poles, stringing of lines etc. The P.U.C. also had the authority to resolve dispute between municipalities and utility companies.[60] The Commission was just what Winnipeg needed. It was a success: it not only allowed the two rival utilities to coexist peacefully, it helped give Winnipeg the lowest electricity rates in North America.[61]

In 1919 the provincial government established its own distribution system.[62] It operated independently of the company owned by the City of Winnipeg and without this market it was destined to remain small. The federal government may also have played a part in thwarting the growth of the Province's system. When both the province and a private company expressed an interest in developing a power site on the Winnipeg River in the mid-1920s, the federal Department of the Interior made it clear that it preferred private development. A major confrontation with the federal government was avoided when the Province decided to accept the advice of an independent report that also recommended private development. The power company involved agreed to sell the Province all the power it needed for its distribution system at reasonable rates.[63] From a business point of view, the Province's decision was sound, but it did not sit well with the advocates of public power. Nevertheless, the site was developed by private enterprises. The Manitoba Power Commission did not become a major producer or distributor of electricity until after 1945.[64]

(c) The Quebec Example

The hydro-electric industry of Quebec developed in an environment that was quite different from that of either Ontario or Manitoba. In Ontario, attention was focussed on the Niagara River as the major hydro-electric site close to urban and industrial markets. In Quebec there were several different sites available - the St. Lawrence, the Gatineau, the St. Maurice, and the Saguenay rivers. Different companies usually acquired control of the whole river and thus were able to establish regional monopolies. Outside of Montreal there was a limited amount of general manufacturing of the type found throughout southern Ontario. Resource industries predominated in the rest of Quebec. While general manufacturing and the retail market - residential, commercial, street lighting and farms - used approximately 50 percent of the power produced in Ontario in the period from 1931 to 1940, less than 20 percent of Quebec's power was used for these purposes. Conversely, as much as 75 percent of Quebec's power output was either exported or used in resource industries - mineral extraction and forest industries.[65] Much of the power used by these industries was produced by companies that were subsidiaries of the paper companies, such as the Gatineau Power Company, a subsidiary of the International Paper Company, or by enterprises such as the Saguenay Company which was associated with the Aluminum Company of Canada. Thus much of the power produced in Quebec was consumed in markets which were unlikely to produce strong demands for either government ownership or regulation. Nor was the political culture of Quebec at that time likely to produce strong demands for government control. The progressive impulse which provided some of the fuel for the public power movements in Ontario and Manitoba was largely absent from Quebec.[66]

On the basis of what occurred in Ontario and Manitoba, it is possible to suggest four different techniques that the Quebec government could have used to exercise some control over rates and service: (i) it could have included regulatory clauses in the leases for the power sites, as was done in Ontario; (ii) it could have followed the Winnipeg example and encouraged, or created, competition between public companies and private companies; (iii) it could have created a regulatory body along the lines of the Manitoba Public Utilities Commission; or, (iv) it could have become directly involved in the production and distribution of electricity. In 1907 the government began to make use of the first technique, but by then some of the best generating sites in the province had been sold.[67] Two years later it created a Public Utilities Commission,[68] in 1935 it was replaced by the Quebec Electricity Commission and it, in turn, was replaced by the Provincial Electricity Board in 1937.[69] Some indication of the success of these regulatory bodies can be derived from the preamble to the 1935 Act which admitted, "the mistakes and abuses of the past must be rectified and a repetition of them [must] be prevented." Neither the Quebec Electricity Commission nor its successor was able to prevent the abuses. Regulation was ineffective and public ownership was almost non-existent until the Province acquired the Montreal Light, Heat and Power Company in 1944. This lack of political control produced what John Dales has described as, "an environment of unfettered private enterprise that public utilities seldom enjoy."[70]

Dales goes on to suggest that the power companies took advantage of their freedom. Domestic rates were considerably lower in Ontario than in Quebec, even though transmission costs were higher.[71] Not only were rates higher in Quebec, but several of the companies did little to supply the domestic market. In 1939, for example, the Gatineau Power Company had only seven miles of rural lines.[72] The companies concentrated on providing power for industry or for "export" to Ontario. One exception was the Montreal Light, Heat and Power Company which existed solely to serve the Montreal market. It operated in a manner that cried out for effective regulation.[73] It bought out competitors or reached agreements in order to protect its monopoly. It had little interest in technological innovation or even in increasing its market; it preferred to concentrate on protecting its position. Its position was enviable. Dales claims that during the 1920s the company was "embarassingly" profitable.[74]

Successive Quebec governments preferred token regulation to either government ownership or effective regulation. Large profits, poor service and high domestic rates were the result. Before elections political parties regularly promised reform, but once elected, they forgot all about it. Prior to the 1936 election the Union Nationale promised that it would regulate the existing companies and set up a provincial system. After the election Premier Duplessis became a staunch supporter of the private power companies. When a Liberal government nationalized Montreal Light, Heat and Power in 1944 the Union Nationale denounced the move.[75] The power companies were left alone for two obvious reasons: their political influence was immense; and, as was mentioned earlier, they provided their major customers - the resource industries - with relatively inexpensive power.[76]

The hydro-electric industry uses resources (the water power of rivers) that belong to the public, it produces a product that is considered to be a necessity and it is an industry that tends toward natural monopoly. For these reasons it is an excellent example of an industry "clothed with a public interest."[77] However, as we have seen, the emergence of the hydro-electric industry in Canada did not produce a text-book example of public interest regulation. Instead, it produced government ownership in Ontario, a mixture of municipal ownership and regulated private development on the prairies and ineffective regulation in Quebec. It is difficult to generalize about the relationship between public ownership and regulation although it is possible to suggest that public ownership was perceived to be a more effective means of social control. This did not ensure the triumph of public ownership. It was not until the mid-1950s that the amount of electricity generated by public companies exceeded that generated by private companies, and it was not until the provincial takeovers of private companies in British Columbia and Quebec in the early 1960s that the victory became decisive.[78]

(v) The Federal Role

The federal government's right to regulate with respect to hydro-electric power was based on its authority over navigation and its undisputed right to regulate export trade. As well, the federal government became involved when the development of a site required American approval. Federal regulation began with the Electricity and Fluid Exportation Act of 1907,[79] which was to become the basis of the present National Energy Board (established in 1959). The Act was a response to the situation at Niagara Falls where the three companies involved exported to the United States more than half of the power that they produced. Many people in Ontario were concerned because they thought the power could be used within the province while many Americans were worried about becoming dependent on imported power. There was also a concern in the United States that further development would destroy the scenic beauty of the Falls. In 1906 the American government passed the Burton Act[80] limiting the amount that each of the three companies could export to the United States. In the same year, Ontario created its Power Commission. The federal government had to act to establish its presence. The Electricity and Fluid Exportation Act of 1907 was the result. It was also an attempt to reassure the power companies and other businessmen who were worried about the actions of the Ontario government. This explains the comments of the federal Minister of Justice when he introduced the legislation:

> There have been expressions of apprehension that this is a proposition to interfere unduly with the vested rights of capital and of companies engaged in these enterprises, and that this is legislation of an extraordinary character proposing to interfere with the management of a man's own business.... The rights of the property owner are intended to be conserved to the fullest extent and are in no sense infringed upon to his detriment.[81]

The members of the opposition, particularly those from Ontario, were not as worried about the power companies as they were about the weakness of the measure. They pointed out that once licenses for export were granted it would be very difficult to revoke them.[82] The Conservatives attempted to amend the bill to prohibit a company from exporting more power than it sold domestically. This was defeated along with Robert Borden's proposal that enforcement of the Act be given to the Board of Railway Commissioners.[83] The Governor in Council (the Cabinet) rather than a statutory regulatory agency was given the authority to approve exports, impose duties and to issue licenses. The Act dealt with petroleum, natural gas, water and "other fluids" as well as electricity.

(vi) Federal-Provincial Conflict

Premier Whitney of Ontario had been consulted about the *Electricity and Fluid Exportation Act* and was reasonably satisfied, but Adam Beck, the chairman of the Hydro Electric Power Commission wanted the Province of Ontario to have a greater role in regulating exports. However, as long as there was no shortage of power in Ontario Beck could not object too strongly to the export of surplus power. During the First World War the Power Commission began to run short while at the same time companies in the United States supplying the Imperial Munitions Board claimed they would have to cut production if they received less power. Beck demanded a reduction in exports. The American government threatened to block exports of coal to Canada if electricity exports were curtailed. Ottawa responded by appointing a Power Controller under the War Measures Act. Beck not only refused to cooperate, he threatened to oppose Unionist (government) candidates in the forthcoming federal election.

To further complicate matters, the Ontario government purchased one of the power companies at Niagara. With the Ontario government now in the business of exporting power, Ottawa's attempt to regulate exports became all the more difficult.[84] Fortunately, the end of the war, and the opening of the Commission's Queenston plant in 1922, temporarily solved the problem of a shortage of electricity. The possibility of further conflict on the question of exports was lessened as a result of resolution passed by the House of Commons in 1925.[85] It stated that the export of power should be permitted only on yearly licenses and that no new licenses should be granted without the concurrence of the province concerned. The resolution was proposed by a Conservative but was changed to include the clause about provincial approval as a result of Mackenzie King's suggestion.

In 1919 the federal government passed the Dominion Water-Powers Act.[86] It was a fairly routine piece of legislation dealing with water-powers in the three prairie provinces that were the property of the Dominion. It merely clarified the authority the Federal government already had under the Dominion Lands Act.[87] The federal government's control over hydro-electric development in the West was not a major source of contention except insofar as the three provinces believed they should be allowed to manage their own natural resources in the same way that other provinces did.

A far greater source of federal-provincial conflict was the federal claim that it had control over hydro-electric development on navigable rivers. Ontario and Quebec were particularly concerned about this claim since what was at stake was control over the development of sites on the Ottawa and St. Lawrence Rivers. Ontario, in particular, was concerned since Niagara Falls was already producing as much power as it could with the existing technology and under the terms of a treaty with the United States. These two rivers were the obvious choices to be developed next as they were close to urban markets. As well, Ontario wanted to make sure that when development began the publicly-owned system and not a private company would be undertaking the task. Then there was the money involved. If the federal government successfully established its claims, it would receive annual rental fees and any other revenue. The federal claim rested on its authority over navigation and shipping as granted in Section 91 of the British North America Act and its ownership of "canals, with lands and water power connected therewith" as provided in Section 108 of the Act. The provinces conceeded the federal authority over navigation, but argued that it only had jurisdiction over the water necessary to operate locks or make rivers navigable and any surplus water, i.e., any available for hydro-electric power, was part of their natural resources.[88]

(vii) The Federal Government in Retreat

The dispute heated up at intervals throughout the 1920s and 1930s as proposals were made to develop sites on the two rivers. When an old federal charter and a more recent lease for different sites on the Ottawa River came up for renewal in 1927, the Premiers of Ontario and Quebec denied that the federal government had any authority to renew them. Prime Minister King prudently decided not to renew them, although he maintained that he had the power to do so. According to his biographer, King's decision was based on political considerations. Ever sensitive to threats to Canadian unity and to the Liberal party, King feared a joint Ontario-Quebec provincial rights campaign directed against his government.[89] At best, this was a temporary solution, it did nothing with respect to the constitutional issue. In 1928 King reluctantly referred a series of questions to the Supreme Court of Canada without consulting the provinces - a move which caused further bickering. The Court's answers were so vague as to be almost useless.[90] Early in 1930 King met with Premiers Taschereau (Quebec) and Ferguson (Ontario) in an attempt to find a solution. The Prime Minister refused to concede the Dominion's claim, but suggested that he was prepared to deal with the provinces as if they had the right to the power sites.[91] Rather than help heal the rift between Ottawa and the two provinces, the meeting created more ill-will when King and the two Premiers later disagreed over what had been resolved.[92] Premier Ferguson was determined to get rid of King and in the federal election of 1930 he did his best to ensure R.B. Bennett's election.

With a Conservative government in both Ottawa and Toronto, relations improved. One of the results of the improved relationship was an agreement concerning hydro-electric development on the St. Lawrence River. Throughout the 1920s Ontario had been interested in a hydro-electric plant on the river, but any development would have required both American cooperation and federal approval. The federal government was unwilling to consider hydro-electric development separate from construction of a seaway. It argued that if it paid for the necessary construction it would need the sale of electricity to help defray costs of the seaway. In 1932 Canada and the United States signed a treaty to build a seaway and the federal government agreed that:

> Ontario shall be deemed the owner of the works constructed solely for power on the Canadian side of the international boundary and of the Canadian share of power in the international rapids section.[93]

The agreement came to nought when the treaty was rejected by the American Senate, but an important concession had been made.

The federal government had already given the provinces an effective veto over power exports and now it appeared that it was conceeding its claim to power developed on navigable rivers. However, Ontario and the federal government soon found a new way to disagree. Ontario had traditionally opposed the exports of electricity, claiming that it needed all the power it could produce. When the Depression lowered the demand for power, the province suddenly found itself importing power from Quebec it did not need. First, it tried to repudiate the contracts with the Quebec companies. When this failed it asked the federal government to approve exports. The Liberal government refused. Mitchell Hepburn, the Ontario Premier, responded by charging that the refusal was part of an elaborate plot devised in Washington to force Ontario into a seaway project it did not want.[94] When the American government announced a ban on imports of power early in the following year (1938) the immediate cause of the disagreement was removed. Hepburn was not appeased, he refused to help a Liberal candidate in one federal by-election and threatened to run his own candidate against the official Liberal candidate in another.[95] More seriously, Hepburn completely refused to cooperate with the Royal Commission on Dominion-Provincial Relations.

In 1938 the federal government introduced legislation to amend the 1907 act regulating exports.[96] According to Prime Minister Mackenzie King, the object of the legislation was "to transfer to parliament itself the power at present legally vested in the governor in council to control all export of electric power from this country."[97] Existing licenses would not be affected, but before any new exports were allowed the company, or province involved would have to secure approval by a private act of Parliament. During debate on the bill a clause was inserted that stipulated that export prices were to be no lower than domestic prices. Although the Prime Minister's stated objective was worthy enough one can assume that another objective was to allow the federal government to avoid having to take a stand on future applications. This aspect of the bill did not escape the attention of Arthur Meighen, the Conservative leader in the Senate who said: "this Bill has no public policy behind it. This is merely an attempt on the part of the Administration to avoid a declaration of policy. It simply throws its hands in the air."[98] The Bill was passed by the House, but the Conservative-dominated Senate chose not to proceed with it.[99]

Weak as it was, the *Electricity and Fluid Exportation Act* was the high point of federal regulation. Thereafter, the behaviour of the federal government was characterized by a series of strategic withdrawals. By the end of the 1930s, the federal government had largely abandoned its attempts to regulate the export of hydro-electric power and to control development on international and navigable rivers. In doing so it also abandoned any possibility of developing a much needed new national policy. Instead, the main result of federal intervention was an increased bitterness in federal-provincial relations.

(2) Federalism and the Regulation of Insurance

(i) Businessmen and Regulation

When federal and provincial politicians argued about which level of government should regulate certain activities, businessmen did not stand idly by. Generally speaking, they preferred federal regulation. The most obvious reason for this preference was that it would ensure a uniformity of laws. For example, *Industrial Canada*, the journal of the Canadian Manufacturers' Association, regularly called for a federal insolvency act to replace or supersede provincial legislation.[100] When a federal act was finally passed in 1919 the Association was able to announce: "we are glad to state that we were able to introduce very important amendments which are incorporated in the Act and which will contribute to the greater protection of creditors."[101] The journal was particularly critical of differences in the companies or incorporation acts of the various provinces.[102] Businessmen generally preferred federal regulation because it was thought that the federal government was more responsible and more respectful of the rights of private property. They even urged the federal government to take action in areas that were clearly outside federal jurisdiction.

In many cases, the constitution was sufficiently ambiguous to allow businessmen to turn to whichever level of government was more responsive to their needs. As we have already noted, when Ontario lumbermen were unable to convince the federal government to put an export duty on saw logs they successfully turned to the Ontario government for an export ban. Or when one of the provinces passed legislation they disliked, businessmen looked to Ottawa for disallowance.[103]

In some areas, the constitution (the British North America Act) was reasonably clear. Section 91 of the Act gave the federal government control over currency and banking and the provinces rarely tried to encroach. In other areas it was less clear. It was difficult to tell how far the federal government's right to regulate with respect to trade and commerce or bankruptcy and insolvency extended before it began to interfere with provincial jurisdiction over property and civil rights. Conversely, the provinces could incorporate companies with provincial objects, but it was unclear how broadly the phrase "provincial objects" was to be defined. For the most part, it was these two grey areas which formed the basis for the disagreement over the regulation of insurance companies.

(ii) Initial Federal Legislation

Federal regulation of insurance companies began with Confederation. In the first session of Parliament, An Act respecting Insurance Companies[104] was passed along with other general acts dealing with railways, copyrights and trademarks and currency. This suggests that the Act was seen as a general housekeeping act rather than as a response to a crisis or to public demand. However, the government must have attached some importance to it since it kept Parliament in session to pass it, despite the strenuous objections of the Opposition. Opposition criticism centred on the constitutional issue. It was argued that the legislation dealt with matters more properly left to the provinces.[105] The bill was defended on the grounds that it protected the public.[106] The Act regulated both fire and life insurance companies by requiring obtain a license from the Minister of Finance. Companies requesting licenses had to deposit $50,000, or $100,000 in the case of foreign companies. A clause requiring companies to submit annual statements provided a degree of supervision. The Act did not apply to any provincially-incorporated company, "so long as it shall not carry on business in the Dominion beyond the limits of that Province by the Legislature or Government of which it was incorporated...."[107]

A system of inspection was proposed in 1871 but it did not survive the Committee on Banking and Currency.[108] The proposal did have some support in the business community. The Monetary Times justified stricter regulation on the grounds that most policy-holders are not capable of determining if a company is sound. It then went on to argue:

> A salutary effect of wise governmental supervision would be to impart greater confidence in Canadian companies by giving the public the fullest and most satisfactory assurance of their soundness ... but had we once impressed on the public mind the fact that home companies were as successful, as safe, and as liberal as the best of those organized and conducted in other countries and which now carry out of Canada such large sums annually, the result would be a more general resort by our people to the benefits of life insurance.[109]

In 1875 a Superintendent of Insurance was appointed.[110] Two years later, companies were required to maintain assets in Canada sufficient to cover their obligations.[111] Whether intended or not, this requirement resulted in several foreign companies abandoning operations in Canada. The 1877 Act again exempted provincial companies, but it went on to add:

> it shall be lawful for any such company to avail itself of the provisions of this Act, and, if it do so avail itself, such company shall then have the power of transacting its business of insurance throughout Canada.[112]

(iii) The Constitutional Challenge

These early federal Acts were based on the assumption that the provinces' right to regulate was restricted to companies operating solely within their province of incorporation. This assumption was called into question by the decision in Citizens Insurance Co. v. Parsons; Queen Insurance Co. v. Parsons.[113] The two insurance companies tried to get out of settling with Parsons by arguing that an Ontario statute was ultra vires. The Judicial Committee of the Privy Council disagreed:

> it by no means follows ... that because the dominion parliament has alone the right to create a corporation to carry on business throughout the dominion that it alone has the right to regulate its contracts in each of the provinces.

The decision was significant because it was the first specific limitation placed on the federal government's jurisdiction over trade and commerce. It upheld the provinces' right to regulate dominion companies, but the decision left intact the assumption that only federally-chartered companies could operate in more than one province. This was challenged in 1907 when the Supreme Court of Canada ruled that an Ontario company could insure property outside of that province.[114] The decision did nothing to help an already strained relationship between Ontario and the federal government. The Laurier government was annoyed by the Ontario government's treatment of the private power companies. Ontario was upset about the federal government's incorporation of a Hamilton-based power and street railway company. The incorporation had been sought to remove the small companies involved from provincial jurisdiction. Premier Whitney did not approve:

> If a large company can be formed by merely organizing a number of short lines chartered by this Legislature, and go to Ottawa, and have them declared to be out of our jurisdiction, then I certainly think it is time for us to enter a protest. Now, I say, Sir and I am weighing our words that our Government will not submit to this unless it is compelled.[115]

The federal government responded to the 1907 Supreme Court decision by passing a new Insurance Act in 1910 that reaffirmed the federal right to license provincial companies operating outside of their home province.[116] It would be wrong to assume that this was the only, or even the primary reason for the new legislation. Of more importance was the Royal Commission on Life Insurance which had been appointed in 1906.[117] Investigations in New York State and Great Britain had uncovered a number of irregularities and the federal government decided that a similar investigation was needed in Canada. The Report was particularly critical of the investment practices of the two largest Canadian companies:

> Your Commissioners cannot believe that it was ever the intention of Parliament that, under the pretext of investing in the securities of "public utility" corporations, insurance companies should promote such companies and construct and operate their works. Nor can your Commissioners believe that Parliament intended to sanction the acquisition by an insurance company of the whole of or a controlling interest in the capital stock of a trust company.... These enterprises seem entirely foreign to the very idea of investment.[118]

The Act of 1910 dealt with these abuses in two ways: it imposed new restrictions on the companies; and it increased government supervision. The investment powers of insurance companies were further limited and the type of promotional activity described above was prohibited. In an attempt to improve supervision, the companies were required to make more detailed disclosures and the Department of Insurance was made a separate department under the Minister of Finance.[119] (It exists in this form today.)

As it turned out, it was easier to deal with the problems uncovered by the Royal Commission than with the constitutional problem. The licensing provisions of the 1910 Act were almost immediately challenged. The contentious issue was whether the federal government could force a provincial company operating outside of that province to seek a federal license. The Judicial Committee of the Privy Council ruled that the relevant sections of the Act were ultra vires:

> it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the province.[120]

The federal government reacted to this decision by insisting even more strenuously than it had before, that it alone could license foreign companies. In 1917 it re-enacted the sections of the 1910 Act which prohibited such companies from doing business in Canada without a federal license.[121] As an added precaution the government inserted a similar prohibition into the Criminal Code.[122]

(iv) The Provincial Challenge

In 1924 the Judicial Committee of the Privy Council ruled that the amendments to the Criminal Code were unconstitutional.[123] It now appeared that the federal government could not even force foreign companies to obtain licenses. Up to this point, the regulation of insurance had been only a mildly contentious issue between the provinces and the federal goverment. When the federal government reacted in its now predictable manner and passed new legislation in 1927 it became an issue of major importance.[124] The position taken by Ontario and Quebec was equally provocative. They convinced several American companies to ignore the federal legislation and promised to support them if the federal government took action.[125] The matter was discussed at the 1927 Dominion-Provincial Conference but nothing was resolved. If the dispute had been limited to a constitutional issue an agreement might have been possible. However, there were other considerations. Perhaps the major stumbling block was the competing bureaucrats in Ottawa and the provincial capitals who wanted to protect their positions.[126] The money obtained from license fees was another consideration, along with the fact that some of the insurance companies preferred federal legislation.

The 1927 Act was referred to the courts and parts of it were found to be unconstitutional. The Judicial Committee of the Privy Council ruled that the federal government could not compel a foreign company to seek a license if it already had a provincial license to do business.[127] Instead of conceding the field to the provinces, new legislation was prepared.[128] Admittedly, new regulations were needed to deal with investments. Some companies had invested heavily in common stocks and the stock market collapse threatened the stability of these companies.[129] One of the provisions of the 1932 legislation limited investments in common stocks to 15 percent of total assets. It is obvious from looking at the legislation that the government was all too aware of the weakness of its position. Three separate acts were passed: The Department of Insurance Act; The Canadian and British Insurance Companies Act, 1932; and The Foreign Insurance Companies Act, 1932. The last two Acts contained lengthy preambles explaining why they were passed. There was an obvious attempt to shift the basis of regulation away from trade and commerce to bankruptcy and insolvency. The preamble to The Foreign Insurance Companies Act explained:

> Whereas certain sections of the Insurance Act, chapter one hundred, and one of the Revised Statutes of Canada, 1927, requiring foreign insurance companies to obtain a license as a condition of carrying on business in Canada, have been declared, in view of their relation to other provisions of the said Act, to be not properly formed and, therefore, unconstitutional; public interest that such foreign companies associations and exchanges which are unable to discharge their liabilities to policyholders in Canada as they become due, or are otherwise insolvent, should be permitted to carry on the business of insurance in Canada....

The Act also contained a declaration to the effect that if any provisions of the Act were determined to be beyond the competence of Parliament the other provisions would remain in force.

(v) Compromise

A compromise was finally reached without further resort to the courts. When it became apparent at the 1933 Dominion-Provincial Conference that the Premiers from the Maritimes and the prairie provinces preferred some federal regulation, rather than allow Ontario and Quebec (where most of the companies had their head offices) to dominate the industry, the two central provinces had to abandon their demand that the federal government leave the field entirely except for the issuance of certificates of solvency. The insurance companies also played a part in ending the impasse. Newton Rowell, a prominent corporation lawyer (and former Cabinet Minister) acting on behalf of the Canadian Life Insurance Officers Association, helped draft the new legislation.[130]

It was not surprising that the insurance industry was pleased with the legislation. The federal government also contributed to the compromise. When he moved the second reading of the bill to amend The Canadian and British Insurance Companies Act, Prime Minister R.B. Bennett admitted, "that the business of insurance is within the exclusive jurisdiction of the provinces."[131] The federal government conceded the principle, but managed to retain responsibility for the registration of foreign and Dominion companies and for guarding their solvency. The provinces ended up with complete control over provincial companies and the right to regulate other companies with respect to the details of contracts, the licensing of agents and other similar matters.

Federal regulation of insurance companies was affected by two quite different motives. The primary motive was the protection of policy holders. The means used to achieve this end varied in the period under consideration. Initially, regulation was built into the incorporation process.[132] Regulatory clauses were inserted into company charters and deposits were required before a company was allowed to commence doing business. Once incorporated, companies enjoyed considerable freedom, limited only by the need to make annual statements. In the 1870s a formal supervisory body was established and companies were required to maintain asets in Canada equal to their obligations in Canada. The next significant change in regulatory policy occurred with the 1899 and 1910 Acts which imposed restrictions on the investment practices of companies.[133] Then in 1932 further restrictions were imposed limiting the proportion of assets that could be invested in common stocks. Another way of describing the shift in regulation would be to suggest that there was a change from prescriptive regulations (companies had to fulfill certain requirements) to proscriptive regulation (certain activities were prohibited). Accompanying this was an increase in government supervision of the companies' activities.

The regulation of insurance was also affected by the dynamics of federalism. Although the federal government was the first to enter the field, its authority to regulate was questionable. Insurance is not even mentioned in The British North America Act. However, the fact that federally-registered companies have always accounted for at least 90 percent of the insurance business in Canada certainly provides some justification for federal regulation.[134] At the same time, Ontario and Quebec argued that since 90 percent of the companies had their head offices in one of the two provinces they had an obligation to regulate.[135] Under these circumstances, perhaps the dispute between the provinces and the federal government was inevitable. Even though the dispute may have been inevitable, the length of time required to resolve it was unusually long. That the regulation of insurance was not a high profile issue may have been one factor.

One of the curious aspects of the affair was the minor role played by party politics. Both federal parties seemed equally determined to defend federal regulation. The contentious acts of 1910, 1917, 1927 and 1932 were passed by governments headed by four different Prime Ministers (two Liberal and two Conservative). This suggests another reason why it took so long to resolve the dispute. It may have been the federal bureaucracts rather than the federal politicans who were responsible for prolonging the dispute. In the light of the events of 1934 this would seem to have been the case. A compromise was finally reached when the politicians became actively involved. During the passage of the 1934 amendments, Prime Minister Bennett admitted that the federal Superintendent of Insurance did not agree with the Government's position.[136] The legislation was passed despite his opposition.

The dispute over the regulation of insurance was a relatively minor episode in the history of Canadian federalism. It is safe to say that it did not significantly alter the balance of the federal system. From the regulatory point of view it was equally minor. It would appear that the dispute did not seriously interfere with the primary purpose of insurance regulation - the protection of the policy holders. Its importance lies in its use as an example of the complexity of the regulatory process in a federal state. In a federal state it is not enough to decide that a certain economic activity needs to be regulated, or even to decide how to regulate the activity; it is also necessary to determine which level of government will do the regulating. As we have just seen, this last question can be the most troublesome of the three.

(3) Conclusion

The period from the early 1880s to 1939 was characterized by almost constant tension between the federal and provincial governments. Some of the issues, particularly those dealing with language and religion, have recieved considerable attention. The controversies over bilingual education in Manitoba and Ontario have long been standards topics in Canadian history. It is only recently that jurisdictional disputes over regulation have begun to receive similar attention.[137] Such disputes played an important role in the development of Canadian federalism. Initially, they were part of provinces' struggle to achieve a constitutional status equal to that of the federal government. By the end of the nineteenth century they had gone a long way towards achieving that goal. Thereafter the focus shifted. The provinces became more concerned with controlling economic activity within their borders. By controlling economic activity it would be easier to encourage growth and development; they would be able to keep all the revenue generated from licenses and rental fees; and, perhaps most important of all, they would have greater control over their social and economic future. This last goal was the most elusive, but it has also been the most persistent. Although Ontario led the provincial assault in the disputes discussed in this chapter, the arguments used by Premiers Ferguson and Hepburn have been used more recently by the Premiers of Alberta, British Columbia and Newfoundland. The issues have remained the same, only the names of the actors and the industries involved have changed.

At times, regulation got lost in the struggle. It became a weapon in the disputes between the federal government and the provinces. Effective regulation can serve the public interest by ensuring the efficient allocation of resources, by protecting consumers from unfair business practices, or by effecting changes in the distribution of income. If it is to be effective in a federal state there has to be cooperation among the different levels of government. In the period under study, this was often noticeably absent. It should have been reasonably easy to work out a division of jurisdiction for the regulation of insurance. Instead, one encounters private companies left almost completely unregulated, self-serving public enterprise, and federal politicians unwilling to regulate exports for fear of alienating the provinces. In a sense, Ontario Hydro acted no differently than Montreal Heat, Light and Power - both were primarily interested in protecting their privileged position. It could be argued that the politicians involved were doing precisely the same thing. It would appear that business interests are not alone in supporting or opposing regulation on the basis of self-interest.

NOTES

1. See R.J. Schultz, Federalism and the Regulatory Process (Montreal: The Institute for Research on Public Policy, 1979).

2. See J.A. Corry, Difficulties of Divided Jurisdiction, A study prepared for the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939).

3. For an interesting proposal for dealing with the distribution of legislative authority, see Anthony Scott, "An Economic Approach to the Federal Structure," in Options, Proceedings of the Conference on the Future of the Canadian Federation (Toronto: University of Toronto, 1977).

4. At the time of the Confederation it was assumed that the provinces would derive most of their revenue from the public domain. By 1913 the provinces still derived almost 25 percent of their revenue from this source. By 1937 the percentage had declined to just under 10 percent. Report of the Royal Commission on Dominion-Provincial Relations Book III - Documentation (Ottawa: King's Printer, 1940) pp. 30 and 46.

5. In 1611, "Certain orders for the fishermen to observe and keep in Newfoundland," were issued. H. Innis, The Cod Fisheries (Toronto and Buffalo: University of Toronto Press, 1978, first published in 1940) p. 56. See also pp. 95-102.

6. The Atlantic fishing industry has been given new life by another intervention on the part of the state - the declaration of the 200 mile limit. See Gordon Munro, A Promise of Abundance: Extended Fisheries Jurisdiction and the Newfoundland Economy, (Ottawa: Economic Council of Canada, 1980).

7. See H.V. Nelles, The Politics of Development: Forests, Mines & Hydro-Electric Power Development in Ontario, 1849-1941 (Toronto: Macmillan of Canada, 1974), Chapter One.

8. See G.V. LaForest, Disallowance and Reservation of Provincial Legislation (Ottawa: Queen's Printer, 1955).

9. In 1868 Macdonald explained, "My own opinion is that the General Government or Parliament should pay no more regard to the status or position of the Local Governments than they would to the prospects of the ruling party in the corporation of Quebec or Montreal." Quoted by R. Cook, Provincial Autonomy, Minority Rights and the Compact Theory 1867-1921. Study for the Royal Commission on Bilingualism and Biculturalism (Ottawa: Information Canada, 1969), p. 10.

10. Statutes of Ontario, 1884 47 Vic., c. 17. The Act was first passed in 1881 and then again in 1882 and 1883. The first three were all disallowed.

11. Canada, House of Commons Debates 1882, p. 922.

12. McLaren v. Caldwell 9 A.C. 392 (P.C.).

13. The best account of the dispute is by J.C. Morrison, "Oliver Mowat and the Development of Provincial Rights in Ontario: A Study in Dominion-Provincial Relations, 1867-1896," in Three History Theses (Toronto: The Ontario Department of Public Records and Archives, 1961), pp. 206-223.

14. In the period from 1867 to 1900, 72 provincial acts were disallowed. During the next forty years only 35 acts were disallowed. D.V. Smiley (ed.) The Rowell-Sirois Report: An Abridgement of Book 1 of the Royal Commission Report on Dominion-Provincial Relations (Toronto: McClelland and Stewart Limited, 1963), pp. 62, 95 and 203.

15. Liquidators of the Maritime Bank v. The Receiver-General of New Brunswick [1892] A.C. 437 (P.C.).

16. See R. Cook, op. cit., Chapters Three and Four.

17. This issue is discussed in Chapter Two.

18. By 1919 more than 26,000 people were employed in the pulp and paper industry and the gross value of production exceeded $137 million. At this time the industry was still centred in Ontario and Quebec. M.C. Urquhart and K.A.H. Buckley, Historical Statistics of Canada (Toronto: Macmillan of Canada, 1965), p. 336. Production in the Ontario mining industry increased from an annual average of $15.6 million in the period 1902-1906 to $53.6 million in the period 1912-1916. Nelles, op. cit., pp. 179-180.

19. See Chapters Four and Five.

20. Between 1867 and 1899 the lumber industry contributed more than $29 million to the Ontario treasury. This accounted for approximately 28 percent of total provincial revenue. Nelles, op. cit., p. 18. By the 1960s this attitude had changed. The provinces and the federal government poured millions of dollars into resource development in an attempt to encourage economic growth particularly in areas of high unemployment. See Philip Mathias, Forced Growth (Toronto: James, Lewis & Samuel, 1971).

21. It is almost impossible to avoid the expression "the public interest" when discussing regulation. Defining the expression is equally difficult. See W.T. Stanbury, "Definitions of 'The Public Interest'," Appendix D in D.G. Hartle, Public Policy Making and Regulation (Montreal: The Institute for Research on Public Policy, 1979) pp. 213-216; and David Fox, Public Participation in the Administrative Process (Ottawa: Law Reform Commission of Canada, 1979) pp. 3-8 and 141-148.

22. Statutes of Ontario, An Act respecting the Manufacture of Pine cut on the Crown Domain, 1898, 61 Vic., c. 9.

23. Statutes of Ontario, An Act respecting the Manufacture of Spruce and other Pulp Wood cut on the Crown Domain, 1900, 63 Vic., c. 11.

24. See Nelles, op. cit., pp. 117-138; and Albert Tucker, Steam Into Wilderness: Ontario Northland Railway 1902-1962 (Toronto: Fitzhenry & Whiteside, 1978).

25. Unlike Ontario, Quebec apparently did not pass special legislation , but simply inserted a restrictive clause into the timber permits. Quebec, Official Gazette, 1909 "Grant of Permits to Cut Timber," pp. 1405-1406.

26. Statutes of Ontario, 1900, 63 Vic., c. 13.

27. For a more detailed account see Nelles, op. cit., pp. 87-102.

28. See C. Armstrong and H.V. Nelles, "Private Property in Peril: Ontario Businessman and the Federal System, 1898-1911," in G. Porter and R. Cuff (eds.) Enterprise and National Development (Toronto: Hakkert, 1973). Although their arguments are persuasive, it would appear that more work needs to be done to determine if this "appeal procedure" was as important as they suggest.

29. Many of the most important members of the Canadian financial community were involved with the Electrical Development Company. The company was headed by William Mackenzie, of Canadian Northern Railroad fame, Frederic Nicholls, an electrical engineer who helped set up the Canadian General Electric Company, and Henry Pellat, best known for Casa Loma in Toronto.

> At the top, besides the principles, the syndicate was led by the Hon. George Albertus Cox, senator, insurance company president, and capitalist.... Included were the Lieutenant-Governor, Sir Mortimer Clark, the Postmaster General, Sir William Mulock, B.E. Walker, the general manager of the Bank of Commerce and directors of Sun Life, Canada Life, Manufacture's Life, National Trust, and the Toronto Light Companies ... men like James Ross, Herbert Holt, Sir William Van Horne, Senator Forget, Sir F.W. Borden, and C.E.L. Porteous were also given a position on the flotation. A web of interlocking directorships, then, linked the Electrical Development Company directly with the Bank of Commerce, which arranged its banking, the

> National Trust, which took up some of its bonds, the Toronto Electric Light and Toronto Railway companies, Toronto General Trusts, Canadian General Electric, the Canadian Northern and the life insurance companies already mentioned.

Nelles, _op. cit._, pp. 233-234. This helps to explain why the financial community did not take kindly to the Ontario government's decision to get involved in the distribution and sale of power.

30. Nelles, _op. cit._, pp. 248-255.

31. Statutes of Ontario, 1903 3 Edw. VII, c. 25.

32. Statutes of Ontario, _An Act to provide for the Transmission of Electrical Power to Municipalities_, 1906 6 Edw. VII, c. 15.

33. _Ibid._, s. 12.

34. _Ibid._, s. 21.

35. Nelles, _op. cit._, pp. 258-272.

36. Revised Statutes of Ontario, 1914, _The Power Commissions Act_, c. 39, s. 41.

37. Statutes of Ontario, 1916 6 Geo. V, c. 21, s. 4.

38. Statutes of Ontario, _The Ontario Niagara Development Act_, 1916, 6 Geo. V, c. 20.

39. H.V. Nelles, "Public Ownership of Electrical Utilities in Manitoba and Ontario, 1906-1939", _Canadian Historical Review_, Vol. 57, No. 4, December 1976, p. 462.

40. Nelles, The Politics of Development, op. cit., p. 304.

41. Aidan R. Vining, "The History, Nature, Role and Future of Provincial Hydro Utilities" in B. Doern and A. Tupper (eds.) Crown Corporations and Public Policy in Canada, (Montreal: The Institute for Research on Public Policy, 1981), p. 4.

42. Nelles, The Politics of Development, op. cit., p. 270.

43. University of Toronto, Walker Papers, Box 30, Walker to A.B. Aylesworth (Minister of Justice) January 11, 1907.

44. Any attempt on the part of the federal government to regulate the industry would probably have run afoul of the province's exclusive right to legislate in relation to matters dealing with property and civil rights. The federal government could have overcome this obstacle by declaring the industry to be for the general advantage of Canada (as it did with the grain trade) although this would have involved an immense political risk.

45. Statutes of Ontario, The Ontario Railway and Municipal Board Act, 1906, 6 Edw. VII, c. 31. Other provinces set up similar bodies. Nova Scotia established the Board of Public Utility Commissioners in 1909 (Statutes of Nova Scotia, 1909, c. 1). Quebec created its Public Service Commission in the same year, and in 1912 Manitoba established a Public Utilities Commission. See below for details regarding the Quebec and Manitoba commissions.

46. Ibid., ss. 19, 21 and 54.

47. C.W. Humphries, "The Sources of Ontario 'Progessive' Conservatism, 1900-1914," Canadian Historical Association, Historical Papers, 1967, p. 129.

48. George Grant, Lament for a Nation (Toronto: McClelland and Stewart Limited, 1965), p. 71. Gad Horowitz, Canadian Labour in Politics (Toronto: University of Toronto Press, 1968).

49. Horowitz, op. cit., p. 20.

50. Nelles, The Politics of Development, op. cit., pp. 251-255 and 492-495.

51. Ibid., p. 217.

52. H.A. Innis, "Government Ownership in Canada," in H.A. Innis (ed.) Problems of Staple Production in Canada (Toronto: The Ryerson Press, 1933), p. 75; and J.H. Dales, Hydroelectricity and Industrial Development, Quebec 1898-1940 (Cambridge, Mass.: Harvard University Press, 1957), p. 48.

53. Nelles, The Politics of Development, op. cit., p. 407.

54. Quoted by Vining, op. cit., p. 9.

55. For details see A.F.J. Artibise, Winnipeg: A Social History of Urban Growth, 1874-1914 (Montreal and London: McGill-Queen's University Press, 1975), pp. 88-101; Nelles, "Public Ownership of Electrical Utilities..." op. cit., and P.L. Eyler, "Public Ownership and Politics in Manitoba, 1900-1915," (Unpublished M.A. Thesis, University of Manitoba, 1972).

56. Statutes of Manitoba, An Act to further amend "The Winnipeg Charter", 1906, 5-6 Edw. VII, c. 95.

57. Artibise, op. cit., pp. 100-101.

58. Nelles, "Public Ownership of Electrical Utilities..." op. cit., p. 462.

59. Statutes of Manitoba, The Public Utilities Act, 1912, 2 Geo. V, c. 66; Nelles, "Public Ownership of Electrical Utilities..." op. cit., pp. 467-469.

60. The Public Utilities Act, 1912, ss. 20, 25 and 19.

61. Vining, op. cit., p. 27.

62. Statutes of Manitoba, The Electrical Power Transmission Act, 1919, 9 Geo. V, c. 30.

63. Nelles, "Public Ownership of Utilities..." op. cit., pp. 472-483.

64. Vining, op. cit., p. 29.

65. Dales, op. cit., p. 45. The percentages differ if one looks at the revenue derived from various markets. In Quebec 55 to 60 percent of revenue came from retail, small power and general manufacturing markets, for Ontario the corresponding figure was 85 to 86 percent.

66. Joseph Levitt has argued that progressivism was present in Quebec in the period before 1914 in the Nationalist League. Henri Bourassa was its most prominent member. Levitt claims that, "In their fight against the spoilation

of natural resources, their anti-monopoly sentiments, their drive to eliminate corruption from politics, and their desire for factory legislation, they showed a striking similarity to the outlook of the American Progressives." The Montreal Light, Heat and Power Company was one of their favourite targets. Joseph Levitt, Henri Bourassa and the Golden Calf: The Social Program of the Nationalists of Quebec (Ottawa: Les Éditions De L'Université D'Ottawa, 1969), p. 3. See in particular Chapter V, "Trusts and Monopolies."

67. Dales, op. cit., p. 31.

68. Statutes of Quebec, An Act to create the Quebec Public Utilities Commission, 1909, 9 Edw. VII, c. 16.

69. Statutes of Quebec, An Act to amend the Revised Statutes, 1909, respecting the Quebec Public Utilities Commission, 1920, 10 Geo. V, c. 21; Quebec Electricity Commission Act, 1935, 25-26 Geo V, c 24; and An Act to establish Provincial control of electricity, 1937, 1 Geo. VI, c 25. In 1937 the Union Nationale government honoured one of its election promises and created the National Electricity Syndicate to generate and distribute power, but its creation was purely statutory. Statutes of Quebec, An Act to establish and assure State competition respecting hydro-electric resources, 1937, 1 Geo. VI, c. 24.

70. Dales, op. cit., p. 30.

71. Ibid., pp. 29, 48.

72. Ibid., p. 120.

73. This begs the question of whether effective regulation is possible. In an important article published in 1962 comparing rates in regulated and unregulated states, George Stigler and Claire Friedland concluded that regulation did not have any significant effect:

> The ineffectiveness of regulation lies in two circumstances. The first circumstance is that the individual utility system is not possessed of any large amount of long run monopoly power.... The second circumstance is that the regulatory body is incapable of forcing the utility to operate at a specified combination of output, price and cost.

George Stigler and Claire Friedland, "What Can Regulators Regulate? The Case of Electricity", Journal of Law and Economics, Vol. 5, No. 1, April 1962, p. 11.

74. Dales, op. cit., p. 48.

75. H. Quinn, The Union Nationale: A Study in Quebec Nationalism (Toronto: University of Toronto Press, 1963), p. 83.

76. One reason for their political influence was their willingness to contribute money to party coffers. In the early 1930s this led to one of this country's biggest political scandals. For details see H.B. Neatby, William Lyon Mackenzie King: The Lonely Heights, 1924-1932 (Toronto: University of Toronto Press, 1963), pp. 369-385.

77. Although not totally absent from Canada, this concept has been used much more extensively in the United States. In the United States there has been a deliberate attempt, dating back to Munn v. Illinois in 1877, to establish that certain businesses and industries are "clothed with a public interest" in order to justify regulation. To an extent, this was necessary because of the protection afforded property by the United States Constitution. See Charles F. Phillips, Jr., "The Legal Concept of Regulation," in The Economics of Regulation Rev'd ed. (Homewood, Illinois: Richard D. Irwin, Inc., 1969), Chapter Three.

78. The takeovers in British Columbia and Quebec were the result of considerations that had little to do with the standard rationales for the introduction of regulation - increased economic efficiency, control over rates etc. There were two major considerations. The first was that, if "nationalized," the industry would no longer have to pay millions of dollars annually in federal taxes. This money would remain in the province. The second was a desire on the part of the provinces to attain greater control over their social and economic destinies. In Quebec, this was expressed by the slogan, "maître chez nous."

79. Statutes of Canada, Electricity and Fluid Exportation Act, 1907, 6-7 Edw. VII, c. 16.

80. Burton Act, c. 3621, 34 Stat. 626 (1906).

81. Canada, House of Commons Debates, 1906-07, p. 1294.

82. Ibid., pp. 2229-2286.

83. Ibid., pp. 4953-4969.

84. For a more detailed account see C. Armstrong, "The Politics of Federalism: Ontario's Relations with the Federal Government, 1896-1941" (Unpublished Ph.D. Thesis, University of Toronto, 1972), Chapter Five.

85. Canada, House of Commons Debates, 1925, pp. 4250-4288.

86. Statutes of Canada, Dominion Water-Powers Act, 1919 9-10 Geo. V, c. 19.

87. Canada, House of Commons Debates, 1919, p. 2512. For an account of the way in which the federal government administered water power sites in the West see C. Armstrong and H.V. Nelles, "Competition vs. Convenience: Federal Administration of Bow River Waterpowers, 1906-1913," in H. Klassen (ed.) The Canadian West (Calgary: University of Calgary, 1977).

88. P. Oliver, G. Howard Ferguson: Ontario Tory (Toronto and Buffalo: University of Toronto Press, 1977) pp. 174-178.

89. Neatby, op. cit., pp. 224-228.

90. Re Waters and Water Powers, [1929], S.C.R. 200.

91. Neatby, op. cit., p. 313.

92. Oliver, op. cit., p. 363.

93. Quoted by Armstrong, op. cit., p. 330.

94. H.B. Neatby, William Lyon Mackenzie King: The Prism of Unity, 1932-1939 (Toronto and Buffalo: University of Toronto Press, 1976), pp. 237-242.

95. Ibid., pp. 270-271.

96. Bill No. 21 to amend the Electricity and Fluid Exportation Act, 1938.

97. Canada, House of Commons Debates, 1938, p. 1191.

98. Canada, Debates of the Senate, 1938, p. 219.

99. Ibid., pp. 563-564.

100. Industrial Canada, Vol. II, No. 4, 1901; and Vol. III, No. 10, 1902.

101. Ibid., Vol. XX, No. 4, 1919, p. 56.

102. Ibid., Vol. XI, No. 1, 1910.

103. See Armstrong and Nelles, op. cit.

104. Statutes of Canada, An Act respecting Insurance Companies, 1868, 31 Vic., c. 48.

105. Canada, House of Commons Debates, 1868, pp. 756-757.

106. Ibid., pp. 413-414.

107. An Act respecting Insurance Companies, 1868, s. 25.

108. Quoted by E.P. Neufeld, The Financial System of Canada: Its Growth and Development (Toronto: Macmillan of Canada, 1972), p. 235.

109. Quoted by Neufeld, op. cit., p. 236.

110. Statutes of Canada, An Act to amend and consolidate the several Acts respecting Insurance, in so far as regards Fire and Inland Marine Insurance, 1875, 38 Vic., c. 20; and An Act respecting Life Insurance Companies and Companies doing any insurance business other than Fire and Inland Marine, 1875, 38 Vic., c. 21.

111. Statutes of Canada, The Consolidated Insurance Act, 1877, 40 Vic., c. 42, s. 7.

112. Ibid., s. 28.

113. Citizens Insurance Co. v. Parsons; Queen Insurance Co. v. Parsons [1881] 7 A.C. 96 (P.C.).

114. Canadian Pacific Railway v. Ottawa Fire Insurance Company [1907] 39 S.C.R.

115 Quoted in Canadian Annual Review, 1907 (Toronto: The Annual Review Publishing Company, 1908), pp. 494-495.

116. Statutes of Canada, The Insurance Act, 1910, 9-10 Edw. VII, c. 32.

117. Order-in-Council P.C. 320, 28 February 1906, appointing Royal Commision on Life Insurance.

118. Quoted by the Superintendent of Insurance for Canada, Submission to the Royal Commission on Banking and Finance, Ottawa, 1962, pp. 26-27. The two companies were Sun Life and Canada Life. Canada Life was controlled by Senator George Cox, the president of Bank of Commerce, and the Central Canada Loan and Savings Company, who along with

his family also controlled Imperial Life. The trust company referred to was National Trust, incorporated in 1898. According to Michael Bliss, it was set up by Cox in order to get around the fact that life insurance companies and banks were prohibited from handling certain transactions such as executing estates or acting as agents in securities transactions. Bliss also claims that Canada Life, "used its policy holders' money to help support the market value of Dominion Coal stock, in which most of its investors had private holdings, at a time when it could have made a profit by selling." Michael Bliss, A Canadian Millionaire: The Life and Business Times of Sir Joseph Flavelle, Bart., 1858-1939 (Toronto: Macmillan of Canada, 1978), pp. 60 and 71. Canada Life was also involved in utilities, see footnote 18.

119. The Insurance Act, 1910. The new legislation was contained in sections 59 (investments) 31 and 35 (annual statements) and 37 (the Department of Insurance).

120. Attorney-General for Canada v. Attorney General for Alberta [1916] 1 A.C. 588 (P.C.).

121. Statutes of Canada, The Insurance Act, 1917, 7-8 Geo. V, c. 29. See Canada, House of Commons Debates, 1917, pp. 1724-1725, for the Minister of Finance's explanation.

122. Statutes of Canada, An Act to amend the Criminal Code (respecting Insurance), 1917, 7-8 Geo. V, c. 26.

123. Attorney General for Ontario v. Reciprocal Insurers [1924] A.C. 328 (P.C.).

124. Statutes of Canada, An Act to amend the Insurance Act, 1917, 1927 17 Geo. V, c. 59.

125. Oliver, op. cit., p. 301.

126. C. Armstrong, "Federalism and government regulation: the case of the Canadian insurance industry, 1927-34," in Canadian Public Administration, Vol. 19, No. 1, Spring 1976. Armstrong emphasizes the intransigence of the federal superintendent, George Finlayson.

127. Re Insurance Act of Canada [1932] A.C. 41 (P.C.).

128. Three separate acts were passed. The title are given below. Statutes of Canada, 1932 22-23 Geo. V, cc. 45, 46 and 47.

129. Neufeld, op. cit., p. 241.

130. Armstrong, "Federalism and government regulation..." op. cit., pp. 94-99. Statutes of Canada, An Act to amend the Canadian and British Insurance Companies Act, 1932, 1934, 24-25 Geo. V, c. 27; and An Act to amend the Foreign Insurance Companies Act, 1932, 1934, 24-25 Geo. V, c. 36.

131. Canada, House of Commons Debates, 1934, p. 4131.

132. See, for example, Statutes of the Province of Canada, An Act to incorporate "The Union Insurance Company of Canada," 1866, 29-30 Vic., c. 129. Section 14 provided that at the annual meeting of the shareholders, the board of directors "shall exhibit a full and unreserved statement of the affairs of the company, of the funds, property and securities, showing the amount of real estate, in bonds an mortgages and other securities...."

133. It was not until 1899 that all companies were given the same investment powers. Prior to the act of that year the investment powers of companies were specified in their

charters. Statutes of Canada, An Act to further amend the Insurance Act, 1899 62-63 Vic., c. 13.

134. Neufeld, op. cit., p. 233.

135. Armstrong, "Federalism and government regulation..." op. cit., p. 93.

136. Canada, House of Commons, Debates, 1934, p. 3217.

137. The studies by C. Armstrong, op. cit., and H.V. Nelles, op. cit., have made a valuable contribution in this area. The material in this chapter is very much dependent on their work.

CONCLUSION

Canadian academics have devoted considerable energy to explaining the activist role assumed by the Canadian state. For the most part though, they have limited themselves to the emergence of the welfare state and such obvious manifestations of state intervention as the CBC, Ontario Hydro and Canadian National Railways. (Note the quotation from George Grant in Chapter One.) One suspects that this might be because by concentrating on mothers' allowances and the CBC it is possible to convince ourselves that we really are different from Americans, that we do have, as Herschel Hardin would have us believe, a unique economic culture. Too much attention to these aspects of state intervention leads to some questionable conclusions. It allows one to believe that, except for developmental projects such as the Welland Canal, the construction of railroads and hydro-electric development, government intervention in Canada was limited until the depression of the 1930s.

Historians have ignored government regulation. (Try and find anything more than a passing reference to the creation of the Board of Railway Commissioners in a general history of Canada, or even in some railway histories.) Political scientists have belaboured the issue of the accountability of regulatory agencies while ignoring the political process through which regulation emerged. Government regulation as an instrument of intervention deserves far more attention than it has received. Until a few years ago, J.A. Corry's study for the Rowell-Sirois Royal Commission, The Growth of Government Activities Since Confederation (1939); John A. Willis' Canadian Boards at Work (1941) and a handful of articles were the only things that had been written on the subject.[1]

An examination of the growth of regulation forces one to question some well-entrenched beliefs concerning government intervention in Canada. Although the Canadian experience has been different from that of the United States it is clear that in the use of regulation, more so than in the use of other forms of intervention, Canada has been influenced by the American example. It is also notable that this seems to be the one area in which government intervention has not been used more extensively here than in the United States. One also has to question the belief that the regulation of the Canadian economy only began with the depression and World War Two. There is ample evidence that a significant amount of regulation was in place prior to World War One. Nor are complaints about too much government interference of recent origin. The complaints about regulation voiced by businessmen early in this century have to be taken with a grain of salt, but they cannot be ignored.

What follows are a number of conclusions, or perhaps observations would be a better word, about the emergence of the regulatory state in Canada.

(1) The Growth of Regulation

Government regulation in Canada has grown in spurts. This study concentrates on two bursts of regulatory activity: the first occurred between 1900 and 1920; the second in the 1930s. The 1890s and the 1920s were periods of relative inactivity. These observations are supported by a study done by Margot Priest and Aron Wohl for the Economic Council of Canada's Regulation Reference.[2] Priest and Wohl began by looking at the more than 500 federal statutes in force in 1978 and concluded that 140 of them could be considered regulatory.[3] They then went backwards to determine when these statutes were first enacted. They found that 69 of the 140 statutes were enacted prior to 1920.[4] Their study bears out the claim that the period 1900 to 1919 witnessed the introduction of a considerable amount of regulation. Between 1900 and 1909 11 regulatory statutes were enacted while in the following decade 17 were enacted. In contrast, only two were enacted in the 1890s and six in the 1920s. The 1930s were a period of renewed activity with the passage of 15 acts, a figure that was not reached again until the 1970s. The study also indicates that 22 of the 140 regulatory statutes were enacted prior to 1870.

Other indicators of government activity mirror this pattern of regulatory activity. For example, in the period 1898 to 1919 seven new federal departments were created.[5] In the following decade no new departments were created. In the period 1900 to 1913 federal expenditures tripled while in the 1920s they remained constant.[6] To a certain extent, the pattern of regulatory activity described above can be found at the provincial level. In their study Priest and Wohl looked at provincial regulatory statutes and found that fewer statutes were passed in the 1920s than in either the preceding or the succeeding decade.[7] At the provincial level the 1920s are all the more of an anomaly because the general provincial pattern is that the number of regulatory statutes passed increased in each decade.

(2) The Political Factor

At first glance, party politics seems to provide an explanation for the pattern of regulatory growth. The Conservatives, under John A. Macdonald (1867-73, 1878-1891), Robert Borden (1911-1920), R.B. Bennett (1930-1935) and five other short-term leaders, were in power for slighty more than half of the years between 1867 and 1939. During their years in office many of the statutes discussed in this study were passed. The Liberals, in contrast, were in office for most of the relatively quiescent 1920s. Some people would suggest that it is only to be expected to find the Conservatives introducing regulation since Canadian Conservatism has an historical affinity for the strong state.

> Canadian Conservatives have something British about them that American Republicans do not. It is not simply their emphasis on loyalty to the crown and to the British connection, but a touch of the authentic tory aura-traditionalism, elitism, the strong state and so on. The Canadian Conservatives lack the American aura of rugged individualism.[8]

A slighty closer look suggests that party labels explain very little. Much of the regulation introduced while Macdonald was Prime Minister was unexceptional, "housekeeping regulation" - banking regulation, insurance regulation, and the Adulteration of Food Act (1884).[9] One piece of legislation which was somewhat out of the ordinary, An Act for the Prevention and Suppression of Combinations formed in restraint of Trade (1889),[10] was unenforceable and the Conservatives made no effort to change it. Remember that the Conservatives deliberately decided not to create a railway commission in the 1880s. The Conservatives' record pales in comparison with the performance of the Liberals under Laurier (1896-1911). It is arguable that the groundwork for the modern regulatory state was laid during the fifteen years of Liberal rule. The Board of Railway Commissioners (1904) was Canada's first full-fledged regulatory agency; the Combines Investigation Act (1910) formed the basis of our present competition policy; the Industrial Disputes Investigation Act (1907)[11] established the framework for subsequent labour relations regulation; and to press a point, one could suggest that the Electricity and Fluids Exportation Act (1907) was the beginning of the National Energy Board. However, as they demonstrated between 1921 and 1930 and again after 1935, the Liberals did not have a natural predilection to intervene in the economy. While Mackenzie King was Prime Minister they avoided intervention whenever possible.

One cannot use party politics to explain the pattern of regulation because, on the whole, both federal parties employed regulation in much the same way. Both parties introduced regulation to win the political support of particular interest groups;

to pacify regional grievances; to encourage economic growth; and to try and convince the public that they were serious about controlling business abuses. The only discernible difference is that the Conservatives under Macdonald and again under Bennett might have been slightly more willing to intrude into provincial jurisdiction.

This does not mean that certain politicians did not leave their marks. The young Mackenzie King as a senior civil servant (1900-1908) and then as a Cabinet Minister (1909-1911) was primarily responsible for the Laurier government's labour policy and the Combines Investigation Act (1910). R.B. Bennett, as a result of his domination of his Cabinet, was almost solely responsible for the regulation introduced while he was Prime Minister.

(3) The Choice of a Governing Instrument

One of the points which this study hopes to make is that it is important to distinguish between regulation and other governing instruments. Unfortunately, it is necessary to concede that in many cases it is not possible to explain why one instrument was chosen over another in a particular situation. The politicians who were involved are not very helpful. In the Debates there is little indication that they were aware that they could achieve the same end with other means. (Admittedly, the absence of an income tax before 1917 was a factor.) There was rarely any discussion about alternatives, and when the cost of regulation was raised the discussion was usually limited to the obvious administrative costs, i.e., how much will we pay the inspectors? When regulation was opposed on principle, it was often because of the fear that too much power was being given to Cabinet Ministers. On other occasions it was opposed on constitutional grounds (the Adulteration of Food Act) or because members were concerned about its effect on business (many members were worried about the effect of the Patent Medicine Act (1908) on druggists' existing stock).

There were some situations in which government ownership and regulation were the obvious alternatives (usually these occurred in areas of provincial or municipal jurisdiction). Government ownership often turned out to be the popular choice. This was particularly the case early in this century when Ontario became involved in the distribution and later the generation of hydro-electric power; the three prairie provinces bought out the private telephone companies; and the federal government agreed to build terminal elevators. Those in favour of government ownership sometimes expressed their arguments in terms of "social control." This was a nebulous concept, somewhat akin to the "public interest." It suggested that, if government-owned, businesses could be operated in the interests of the public rather than in the interests of profit. In practical terms, government ownership seemed to offer both lower rates and a more rapid extension of service.

There were other situations in which regulation was chosen because the politicians simply followed the British or American example, or because they responded to the demands of interest groups for regulation based on British or American regulation. The initial tendency to follow the British example gave way over time to a tendency to adapt American regulation to Canadian use. For example, the federal Trade Unions Act of 1872[12] was almost identical to the British act passed in the previous year; seventy years later it was the American Wagner Act of 1935 that served as a model for federal and provincial labour relations acts.

As well, there were situations in which regulation was used in conjunction with other forms of government intervention. As we have seen, regulation was just one of the means used by the federal government in the 1880s and 1890s to assist the dairy industry. The federal government operated educational creameries and cheese factories; it gave money to the Canadian Dairymen's Association; it appointed a Dairy Commissioner to act in an advisory capacity; it gave subsidies to creameries that built cold-storage rooms; it prohibited the importation and sale of margarine; and it passed the Dairy Products Act to protect the international reputation of Canadian cheese. In this case regulation seems to have been used because it was one more way in which the government could help a growing industry. In many other cases it is not possible to explain why regulation was chosen or rejected. This is a question that requires more research.

(4) Regulation and Federalism

In the United States, federal regulation often followed in the wake of unsuccessful state legislation. One point on which both Gabriel Kolko and his critics agree is that the Interstate Commerce Commission was created because of the failure of state regulation of railways. In Canada the pattern was different - the federal government usually entered the field first. However, on several occasions it was then forced to retreat in the face of unfavourable judicial decisions. Although there have been some federal victories - the 1932 Privy Council decisions on the regulation of aeronautics and broadcasting being the most notable - there have been more defeats. The federal government's claim that it alone could regulate foreign insurance companies or insurance companies doing business in more than one province was whittled down by a series of judicial decisions. The federal government's ability to intervene in labour disputes was seriously curtailed by a judicial decision in 1925.[13] In the same year the federal government found out that it did not have the authority to regulate certain aspects of the grain trade.[14] It was forced to insert a clause in The Canada Grain Act declaring that grain elevators and warehouses were works for the general advantage of Canada.[15] The same expedient had been used to extend federal jurisdiction over railways. The next blow was delivered in 1937 when the Judicial Committee of the Privy Council decided that much of the Bennett New Deal Legislation was *ultra vires*.[16]

One of the ways in which the federal government tried to bolster its regulatory authority was by invoking its jurisdiction over criminal law. In the course of its struggle with the provinces over the regulation of insurance, the federal government inserted a clause in the Criminal Code prohibiting foreign companies from doing business in Canada without a federal license. The Judicial Committee of the Privy Council ruled that this was unconstitutional. The federal government has been more successful using the criminal law to regulate the manufacture and sale of potentially dangerous or adulterated products. This was how the federal government was able to prohibit the manufacture and sale of margarine in 1886. (Its ability to prohibit the importation of margarine was undisputed.) The rationale may have had some basis in 1886 when it would have been relatively easy to sell adulterated margarine; but sixty years later it was apparent that the only reason for the legislation was to protect the dairy industry. In one of its last appeal decisions, the Judicial Committee of the Privy Council held that the law was beyond the authority of the federal government.[17] The federal Food and Drugs Act also relies on the federal government's criminal law power. It was generally considered to be safe until the recent Labatt Breweries decision in which a majority of the justices of the Supreme Court held that the section of the Act empowering the Minister to set standards was unconstitutional.[18]

(5) The Evolution of Regulation

As the amount of regulation has grown, the form it has taken and the means of enforcement have changed. Generally, there has been an evolution in the technique employed. When banks, insurance companies, railways and other incorporated businesses first appeared in British North America a limited amount of regulation was contained in the company charters. For example, bank charters prohibited mortgage lending (this prohibition was not lifted until 1967). The next step was taken with the passage of general acts. Although such acts had been passed by the provinces before 1867, the federal government passed a new set of acts after Confederation. The Railway Act was passed in 1868, An Act Respecting Insurance Companies was passed in the same year and the first comprehensive Bank Act was passed in 1871. These Acts were consolidations of existing legislation with some new clauses added. Except for the requirement that they submit regular statements the companies were left to operate more or less as they wished. One suspects that much of the regulation of this period was ineffective. Little effort seems to have been made to enforce legislation already passed. The appointment of a federal Superintendent of Insurance in 1875 was an anomaly.

It was only after 1900 as the federal government became more actively involved in regulation that it began to create the specialized agencies and appoint the officials necessary to administer the growing body of regulation. The federal government became involved in the inspection of food-processing plants as a result of the Meat and Canned Foods Act and the registration of medicines as a result of the Patent Medicine Act. In 1910 the federal government began to issue food standards under the authority of the Adulteration of Food Act. It was partly because of these new responsibilities that the Department of Health was created in 1919 and The Food and Drugs Act was passed in 1920. The warehouse commissioner appointed as a result of the Manitoba Grain Act (1900) was replaced in 1912 by the Board of Grain Commissioners. In 1910 a Department of Insurance was created within the Department of Finance and in 1924 an Inspector-General of Banks was appointed following the failure of the Home Bank.

The major administrative innovation of the period was the creation of the Board of Railway Commissioners, Canada's first modern regulatory agency. Despite the fact that it was a reasonable success, it did not become a model for future regulatory initiatives as did its American counterpart, the Interstate Commerce Commission. The federal government's experience with the Board of Commerce may have shaken its faith in regulatory agencies.[19] The Board was created in 1919 as a kind of Canadian counterpart to the American Federal Trade Commission, but it got off to a shaky start and then it ran afoul of Section 92 of the British North America Act.[20]

The main reason why regulatory agencies have not been as important in Canada as they have in the United States seems to be that Canadian politicians think that regulatory issues are too important to be left to experts. The regulatory process in Canada has always left ample room for ministerial discretion. Beginning in the latter part of the nineteenth century a clause giving the responsible Minister or the Governor in Council (the Cabinet) the power to make regulations became an increasingly common part of regulatory statutes. When regulatory agencies were created the Cabinet rather than the courts was given the authority to review agencies' rulings. Appeals to the courts were deliberately limited. There have also been experiments with Cabinet regulation. The Railway Committee of the Privy Council was responsible for regulating railways until the creation of the Board of Railway Commissioners. In 1907 the Liberal government of the day ignored opposition demands that the authority to approve exports of electrical power be given to the Board of Railway Commissioners and gave the power to the Cabinet. Now we have the Cabinet acting as a regulatory body under the Foreign Investment Review Act.[21] To quote from a recent study on the FIRA experience, "it is the worst of all possible systems: political control without meaningful effect and decision-making without answerability."[22] The same could be said about the two earlier experiments with Cabinet regulation.

(6) The Pattern of the Growth of Regulation

Thus far, no explanations have been offered for the cyclical pattern of the growth of regulation noted previously. A simple political explanation has been rejected - the Liberals and the Conservatives did not differ enough in their views on the role of the state to explain the pattern. Certain governments were more activist but it is possible that this was simply a result of the circumstances in which they found themselves. A comment made about the American experience offers some possible lines of inquiry:

> The growth of regulation in the United States has not been the product of any farsighted plan or design, inspired by a general philosophy of governmental control. Step by step, whether in state or nation, it has been a series of empirical adjustments to felt abuses, initiated by particular groups to deal with specific problems as they arose.[23]

The first part of the statement would seem to be equally true of the Canadian experience. The second part almost suggests that it is impossible to offer any general conclusions about the growth of regulation. This is not true of the Canadian experience.

It is interesting that the two bursts of regulatory activity identified earlier occurred during a period of rapid growth (the wheat boom) and a depression. This suggests that the pattern of regulatory growth is related to the pattern of economic growth. It is easy enough to understand why the depression led to government intervention. Many industries found themselves in trouble in the 1930s and they turned to the state for assistance. The Canadian National-Canadian Pacific Act (1933) and, to a lesser extent, The Transport Act (1938) were responses to the problems faced by the railways. The re-establishment of the Wheat Board in 1935 was the direct result of the depression. Small manufacturers, who found themselves being pressed on one side by the predatory purchasing practices of the large department and chain stores and on the other by the depressed economic conditions, were another group who turned to the state for relief. The Dominion Trade and Industry Act (1935) was the Bennett government's attempt to help them. Admittedly, not all of the regulatory legislation passed in the 1930s can be attributed to the economic conditions; however, enough of it can to explain the increase in regulatory activity.

The notion that rapid economic growth can contribute to the introduction of regulation becomes more plausible when one realizes that the most recent burst of regulatory activity (in the late 1960s and the 1970s) likewise occurred in a period of rapid growth.[24] (Understandably, there is a lagged effect between the rate of economic growth and the introduction of regulation.) In some respects the years before 1914 were similar to the late 1960s and early 1970s. Both periods experienced significant social change and some social turmoil. In both periods questions were raised about the role and value of big business, the quality and safety of consumer goods and the protection of the environment. In each case these concerns led to the introduction of more regulation.

There are several reasons why one might expect to see these concerns surface in periods of rapid growth. Capitalism has survived because it delivers, at least to a signficant portion of society. Because it delivers it raises expectations. These expectations are highest in periods of prosperity and it is during periods of prosperity that more sophisticated and potentially harmful products are introduced. If the benefits of capitalism are most obvious during good times so too are the costs of capitalism - pollution, the depletion of resources, disparities in wealth, etc. Not only does prosperity produce a demand for regulation to protect consumer and preserve the environment, it also makes available the resources to meet the demand. It is obviously easier for a government to enlarge its bureaucracy to meet new demands when the economy is growing.

Prosperity also seems to produce doubts about capitalism. Jonathan Hughes, the American economic historian, claims that, "The nonmarket controls came into existence because, put bluntly, Americans distrust capitalism in its pure form. There is just no other explanation."[25] The Canadian attitude is more ambivalent. As in most things we avoid extremes: we neither praise capitalism as much as Americans do in their moments of faith; nor do we damn it as much as Americans do in their moments of doubt. The regulation produced by these periodic bouts of skepticism does not always work to the disadvantage of big business. Much of it, such as combines legislation, serves to undercut criticism without significantly weakening the power or influence of business interests. In giving the impression that abuses have been brought under control, regulation legitimizes capitalism. There is nothing conspiratorial about the state providing support for the economic system. To quote George Stigler, such criticism is "as appropriate as a criticism of the Great Atlantic and Pacific Tea Company for selling groceries."[26]

As well, the pattern of regulatory activity has been affected by events in the United States. In the period before World War I, American populism provided much of the rhetoric for farmers demanding the regulation of grain companies and railways while American progressivism provided the rhetoric for middle-class reformers demanding an end to political corruption and the regulation of trusts.[27] In some cases the American influence was direct - the Meat and Canned Foods Act was the result of an American journalist's interest in the condition of the working-class in Chicago. The spill-over effect of events in the United States contributed to the demand for regulation, but the legislative response was shaped by factors unique to Canada. In the pre-1914 period, American trust-busting rhetoric contributed to the demand for regulation in Canada; however, the Combines Investigation Act (1910) reflected the greater Canadian tolerance for business concentrations. There were also occasions when events in the United States contributed to the supply of regulation. To use an obvious example, much of the legislation passed by the Conservative government in 1934-35 was inspired by the political success of Roosevelt's New Deal. Again, the American legislation had to be reshaped to fit Canadian circumstances.

(7) Rationales for Regulation

In moving from explanations for the larger pattern of regulatory activity to explanations for the introduction of specific acts, we at least have some theories or rationales to guide us. In Chapter One the rationales for regulation were set out in a public interest-private interest paradigm. Before trying to apply these rationales to the regulation discussed in this study it might be useful to review them briefly.

Although it is now out of fashion, the public interest rationale enjoyed widespread acceptance in the period being studied and for several years thereafter. Politicians introducing new regulatory legislation invariably justified it on the grounds that it was in the public interest. Skeptics would maintain that this was simply an attempt to minimize opposition. However, politicians were not the only ones who used the rationale. The notion that regulation is introduced to protect the public is the consistent theme running through all of the articles in John Willis' Canadian Boards at Work, published in 1941. In an article dealing with public utility regulation, George Farquhar presents the classic public interest justification for such regulation: "if monopoly were left without regulation it might give what service it chose and charge what rates it would and the community might find itself paying exorbitant rates for unsatisfactory service."[28] This attitude towards regulation was shared by others. J.A. Corry, the political scientist, while occasionally critical of regulation, generally accepted that it served a public purpose. With reference to marketing, he explained the growth of regulation as a response to the increased importance of middlemen; the greater degree of processing (of foodstuffs); and the increase in the quantity, variety and sophistication of goods offered for sale. "This situation," Corry argues, "slowly created a demand for state intervention to facilitate trade and restore equality of bargaining positions."[29] The public interest rationale rests on the belief that one of the proper functions of the state is to control business. This belief was common currency during the first half of this century, as suggested by the comment made by Frank Underhill in the 1940s, "liberalism in North America, if it is to mean anything concrete, must mean an attack upon the domination of institutions and ideas by the business man."[30]

The prevailing optimistic attitude towards regulation began to wane in the 1950s. To many critics, regulation did not seem to be providing the benefits it promised. It seemed that somehow its original purpose had become perverted. To explain this failure the notion arose that regulatory bodies were invariably "captured" by the industries they were created to regulated.[31] John Kenneth Galbraith's description of this process is especially striking:

> regulatory bodies, like the people who comprise them, have a marked life. In youth they are vigorous, aggressive, evangelistic and even intolerant. Later they mellow, and in old age - after a matter of ten or fifteen years - they become, with some exceptions, either an arm of the industry they are regulating or senile.[32]

Admittedly, the capture theory is more appropriate for the American regulatory experience with its greater array of independent agencies; nevertheless, it serves as a useful bridge between the public interest and private interest rationales. It retains the essence of the public interest rationale - regulation is introduced to protect the public - while, at the same time, in recognizing that the goals of the regulators may not be the same as the goals of those who sought the regulation, it acknowledges the importance of self-interest. Gabriel Kolko carried the capture theory one step further. According to Kolko, regulation was not a failure because agencies were captured by the industries they were supposed to regulate; it was a failure because the whole state apparatus had been captured by business interests.[33]

It was not just leftist historians such as Kolko who were dissatisfied with the traditional public interest rationale. There were a growing number of economists who were equally dissatisfied, but for quite different reasons. In 1962 George Stigler and Claire Friedland published an important article in which they demonstrated that utility rates in states with regulation were no lower than rates in states without regulation.[34] Rather than concluding that the failure to produce lower rates was the result of agency capture, Stigler and Friedland concluded there were two reasons for its ineffectiveness: "the individual utility system is not possessed of any large amount of long run monopoly power ... [and] the regulatory body is incapable of forcing the utility to operate at a specified combination of output, price and cost."[35] In other words, utility regulation is pointless. Later, Stigler went on to develop "The Theory of Economic Regulation" in which he explained this anomaly by arguing that regulation is not introduced to protect the public interest, it is introduced because industries and occupations seek regulation.

Stigler's theory of regulation is essentially an economic analysis of politics. For Stigler, regulation is simply a good, the demand and supply of which can be analyzed in the same way that other market transactions are analyzed.

> The essential commodity being transacted in the political market is a tranfer of wealth, [made possible by the introduction of regulation] with constitutents on the demand side and their political representatives on the supply side. Viewed in this way, the market here, as elsewhere, will distribute more to those whose effective demand is highest.[36]

However, the political market differs from other markets in that it produces losers, the unsuccessful bidders, whose opposition might have to be dealt with before the regulation can be suplied. Opposition can be minimized by casting the regulation in terms of the public interest to mobilize support, or by distributing some of the benefits to the losers. The latter approach helps to account for the existence of regulatory cross-subsidization.[37] It also leads to what Peltzman calls the "first principle of regulation:"

> even if a single economic interest gets all the benefits of regulation, these must be less than a perfect broker for the group would obtain. The best organized cartel will yield less to the membership if the government organizes it than if it were (could be) organized privately.[38]

This study contains considerable prima facie evidence in support of a private interest rationale. Stigler suggests that there are four main policies which an industry or occupation may seek: a direct subsidy of money; control over entry; the suppression of substitute products or services and the encouragement of complements; and price fixing.[39] This study contains examples of each. Although subsidies fall outside the definition of regulation given earlier, several examples have been mentioned in passing, particularly in the chapter on the regulation of transportation. The protective tariff is an obvious example of the state controlling entry. An example more within the realm of regulation was Article 15 (the monopoly clause) in the Canadain Pacific Railway's charter. Before it would undertake to build a transcontinental railroad, the company extracted a promise from the federal government that it would not allow any rival companies to build south of its main line. The federal government controlled entry in the west by refusing to give competing companies federal charters and by disallowing provincial charters. The prohibition of the importation, sale and manufacture of margarine is a perfect example of the state using its coercive power to discourage a substitute product. There are several reasons why an industry or occupation would welcome the creation of a regulatory body with the power to fix prices, or provide price support. Such a body could sanction price discrimination; limit intra industry price competiton, and prevent prices or rates from falling below costs. One of the rationales for the creation of the Board of Railway Commissioners was to lessen open rate wars. The British Columbia Produce Marketing Act (1927) and the federal Natural Products Marketing Act (1934) are early examples of the state providing price support for producers.

Stigler could have mentioned that industries often seek to have industries with which they do business regulated. This is one of the ways in which industries try to minimize uncertainty (by reducing the variability of costs and supply). The creation of the Board of Railway Commissioners was not a victory for the public interest, it was a victory for the manufacturers, farmers and other shippers who wanted regulated freight rates. Similarly, the Manitoba Grain Act (1900), the Grain Inspection Act (1904) and the Canada Grain Act (1912) regulated railway companies, grain companies and elevator companies for the benefit of the western grain farmers. It is true that the markets in which the farmers bought transportation, storage and handling services were not very competitive, but the primary concern seems to have been winning votes rather than correcting market failures. As well, this study contains examples of regulation being used to provide a seal of approval for the benefit of certain industries. The Dairy Products Act (1893) was passed to protect the international reputation of Canadian cheese while the Meat and Canned Foods Act (1907) was passed to assist the export trade. In both cases, any benefits received by the Canadian consumer were incidental.

Interest groups do not get the regulation they seek simply by asking for it. If, as private interest rationales suggest, interest groups seek regulation only when they anticipate the benefits will be greater than the costs of securing it, it follows that politicians will supply regulation only when the costs of doing so are less than the anticipated benefits.[40] Generally this means that those with the most to offer are the most likely to get the regulation they seek;

however, it also means that when the costs become prohibitively high even the most powerful interest group can be thwarted. The Canadian Pacific Railway's western monopoly came to a premature end when the federal government decided that the political cost of disallowing any more Manitoba railway charters was too high.[41] The opposition of the banks did not stop the federal government from creating the Bank of Canada in 1934. The government was swayed by the number of groups in favour of a central bank. Conversely, relatively weak interest groups can get the state to regulate on their behalf if their members are localized and their common interests so strong that they can exert sufficient pressure on the government. Individually, the western grain farmers were almost powerless; collectively, they were a voting bloc poweful enough to win several concessions from the federal government. Likewise, the Maritime Freight Rates Act (1927) was a response to the demands of a powerful regional voting block. The distribution of costs not only affects whether regulation will be introduced, it also affects the form it takes. One of the reasons why marketing boards are such a useful means of redistributing income to producers is that the costs are hidden and they are spread among all consumers. The cost to the individual consumer is relatively small, certainly less than the cost of organizing opposition. It is interesting that much of the present criticism of marketing boards comes from consumer groups such as the Consumers' Association of Canada, part of the organizational costs of which have been covered by the federal government.

The argument that regulation is introduced because industries and occupations seek to make use of the power of the state (to gain security, higher profits or protection from competition) is quite persuasive. In the form favoured by Stigler and his followers, its theoretical richness makes it particularly attractive. It is more realistic than the competing claims: that regulation is imposed on unwilling industries by selfless politicians acting in response to widespread public demand; or, that regulation is introduced to correct market failures. However, the first comparison is unfair because this version of the public interest rationale is a straw man - even though critics take turns demolishing it, no one really believes it. The problem with the second is that allocative efficiency is a rather rigid standard. The fact is that much regulation does not improve efficiency. This realization can only be accomodated by arguing that the original intent of the regulation was somehow perverted by the capture process; that the task was too difficult; or, that it was not introduced to improve efficiency. The third explanation in the most realistic.

In order to come up with a reasonable alternative to private interest rationales, one has to begin with a realistic asessment of the role of politicians. The traditional public interest rationale expects too much of politicians. It was, after all, developed at a time when John W. Dafoe, the editor of the Winnipeg Free Press, had to suggest gently that Sir Wilfred Laurier was, "a man who had affinities with Machiavelli as well as with Sir Galahad."[42] In contrast, Stigler's economic theory accepts too willingly the notion that the sole aim of politicians is to maximize political support - the first principle of a politician is to get elected, the second is to get re-elected.

It is necessary to recognize that politicians have their own interests and objectives and that they act in such a way as to further these goals. Politicians do have a monopoly on the supply of regulation and, as Richard Posner suggests, it is plausible that

> they take at least some of their monopoly profits in the form of satisfaction from imposing on the public their conception of the public interest (which might differ from the conception held by the electorate and from the desires of any particular interest group). If this analysis is accepted, it becomes plausible to suppose that some policies are adopted because they conform to the public interest - as conceived by the politicians.[43]

To anyone familiar with the political history of Canada it would appear that many politicians, from Sir John A. Macdonald to our present Prime Minister, have adopted policies on this basis. It is safe to say that in the late nineteenth and early twentieth centuries most politicians (and many Canadians) believed that any policy that encouraged domestic manufcturing, pacified regional grievances, slowed the flow of emigrants to the United States or preserved rural society was in the best interests of the country. Taken individually, the Manitoba Grain Act, the Meat and Canned Foods Act, the Maritime Freight Rates Act, etc. appear to be simple concessions to regional and industrial interest groups; taken together they can be seen as part of the attempt to create a united and prosperous Canada.

As economics, these measures may not have made any sense, but, as Jonathan Hughes has remarked about regulation in the United States, they make sense as history.[44] One could argue that, in the broadest sense, much of the economic regulation discussed in this study is not about economics at all. In Canada, regulation has not been used solely to reward interest groups, to achieve narrow microeconomic goals such as controlling monopoly profits or protecting common property resources or to achieve broad macroeconomic goals such as increasing national income, it has been used as well to achieve certain social, political and cultural goals unique to this country.

NOTES

1. J.A. Corry, The Growh of Government Activities Since Confederation (Ottawa: King's Printer, 1939); John A. Willis (ed.) Canadian Boards at Work (Toronto: Macmillan of Canada, 1941); J.A. Corry, "The Fusion of Government and Business," Canadian Journal of Economics and Political Science, Vol. 2, No. 3, August 1936; Arthur R. Wright, "An Examination of the Role of the Board of Transport Commissioners for Canada as a Regulatory Tribunal," Canadian Public Administration, Vol. 6, No. 4, 1963; and R.J. McFall, "Regulation of Business in Canada," Political Science Quarterly, Vol. 37, No. 2, June 1922.

2. Margot Priest and Aron Wohl, "The Growth of Federal and Provincial Regulation of Economic Activity, 1867-1978," in W.T. Stanbury (ed.) Government Regulation: Scope, Growth, Process (Montreal: The Institute for Research on Public Policy, 1980).

3. Ibid., p. 71. Compared to this study, Priest and Wohl use a more restrictive definition of a regulatory statute. They exclude, for example, the Maritime Freight Rates Act (1927) on the grounds that it is a taxing statute rather than a regulatory statute. Since their figures deal with original enactments, important amendments or consolidations do not appear. Thus the legislation creating the Board of Railway Commissioners is not included in the total for the statutes passed between 1900 and 1909 because the Railway Act was already in existence. Finally, their figures do not include statutes that were later overturned. This is particularly relevant for the 1930s. Despite these differences, their figures agree with the more impressionistic pattern of regulatory activity described in this study.

4. Ibid., Table 1, p. 80. All subsequent figures for federal statutes are from this table.

5. The Department of Trade and Commerce in 1898; the Department of Labour in 1900; External Affairs in 1909; the Department of Naval Service in 1910; Immigration and Colonization in 1917; the Department of Soldiers Civil Re-establishment in 1918 (the Forerunner to Veterans Affairs); and the Department of Health in 1919. J.E. Hodgetts, The Canadian Public Service: A Physiology of Government, 1867-1970 (Toronto: University of Toronto Press, 1973) "Chronological Perspective of Canadian Public Departments, 1867-1972" (between pp. 110-111).

6. Expenditures increased from $56 million in 1900 to $185 million in 1913. In constant dollars (1935-39 = 100) expenditures increased by 250 percent. In current dollars expenditures in the 1920s actually declined, while in constant dollars they increased from $266 million in 1920 to $355 million in 1922 and by 1929 had declined to $331 million. Richard M. Bird, The Growth of Government Spending in Canada (Toronto: Canadian Tax Foundation, 1970), pp. 268-269.

7. Priest and Wohl, op. cit., Table 9, p. 95. In six of the nine provinces the number of statutes enacted in the 1920s declined as compared to the number enacted in the previous decade. In Ontario, one of the three provinces which showed an increase for the 1920s, more than half of 17 statutes listed were passed by the United Farmers of Ontario government that was defeated in 1923.

8. Gad Horowitz, "Conservatism, Liberalism and Socialism in Canada: An Interpretation," in H. Thorburn (ed.) Party Politics in Canada (Scarborough: Prentice-Hall of Canada Ltd., 1972), p. 86.

9. Except for the acts not previously discussed, full citations for the acts referred to in the Conclusion can be found in the notes to the previous chapters.

10. Statutes of Canada, An Act for the Prevention and Suppression of Combinations formed in restraint of trade, 1889, 52 Vic., c. 41.

11. Statutes of Canada, The Industrial Disputes Investigation Act, 1907, 6-7 Edw. VII, c. 20.

12. Statutes of Canada, The Trade Unions Act, 1872, 35 Vic., c. 30.

13. Toronto Electric Commissioners v. Snider [1925] A.C. 396 (P.C.).

14. The King v. Eastern Terminal Elevator Co., [1925] S.C.R. 434.

15. Statutes of Canada, The Canada Grain Act, 1925, 15-16 Geo. V, c. 33, s. 234.

16. See Chapter Five.

17. Canadian Federation of Agriculture v. Attorney-General of Quebec [1951] A.C. 179 (P.C.).

18. Labatt Breweries of Canada Ltd. v. Attorney-General of Canada [1980] 1 S.C.R. 821.

19. The Board of Commerce was created under the authority of Statutes of Canada, The Board of Commerce Act, 1919, 9-10 Geo. V, c. 37, to enforce The Combines and Fair Prices Act, 1919, 9-10 Geo. V, c. 45. See Tom Traves, "Some Problems with Peacetime Price Controls: The Case of the Board of

Commerce of Canada, 1919-1920," Canadian Public Administration, Vol. 17, No. 1, 1974, and "The Board of Commerce and the Canadian Sugar Refining Industry: A Speculation on the Role of the State in Canada," Canadian Historical Review, Vol. 54, No. 2, June 1974.

20. In re the Board of Commerce Act, 1919 and the Combines and Fair Prices Act, 1919 [1922] 1 A.C. 191 (P.C.).

21. Statutes of Canada, Foreign Investment Review Act, 1973-74, 22-23 Eliz. II, c. 46.

22. Richard Schultz, Frank Swedlove and Katherine Swinton, The Cabinet as a Regulatory Body: The Case of the Foreign Investment Review Act (Ottawa: Economic Council of Canada, Regulation Reference Working Paper No. 6, 1980), p. 158.

23. Merle Fainsod, Lincoln Gordon and Joseph C. Palamountain Jr., Government and the American Economy, 3rd ed. (New York: W.W. Norton & Company, 1959), p. 243.

24. As a hypothesis, Sam Peltzman suggests that, "Regulation will tend to be more heavily weighted toward 'producer protection' in depressions and toward 'consumer protection' in expansions." Sam Peltzman, "Towards a More General Theory of Regulation," Journal of Law and Economics, Vol. 19, No. 2, 1976. The evidence in this study produces some support for such a hypothesis.

25. Jonathan R.T. Hughes, The Governmental Habit (New York: Basic Books, 1977), p. 238.

26. George Stigler, "The Theory of Economic Regulation," The Bell Journal of Economics and Management Science, Vol. 2, No. 1, Spring 1971, p. 17.

27. Not everyone would agree that the American influence was as strong as I have suggested:

> the remarkable fact about the Canada of the turn of the century is the slowness of other social groups [than business men] in acquiring political consciousness and organizing movements of revolt against government by business men. American populism was only faintly reflected against Canadian farmers until the 1920s. The Progressive movement which helped to bring Theodore Roosevelt and Woodrow Wilson to the White House seemed to cause few repercussions north of the border. Everybody in Canada in those days was reading the popular American magazines as they carried on the spectacular campaigns of the muckraking era against the trusts. But this fierce attack next door to us against the domination of society by big business stirred few echoes in Canadian public life.

Frank H. Underhill, "Some Reflections on the Liberal Tradition in Canada," in In Search of Canadian Liberalism (Toronto: Macmillan of Canada, 1960), p. 18.

28. George Farquhar, "Public Convenience and Necessity," in Willis, op. cit., pp. 93-94. A cynic might suggest that the reason that Farquhar and the other authors in Willis' book were so uncritical of regulation is because most of them worked on the boards they describe.

29. J.A. Corry, The Growth of Government Activities Since Confederation, op. cit., p. 21.

30. Underhill, op. cit., p.19.

31. Marver Bernstein, Regulating Business by Independent Commission (Princeton: Princeton University Press, 1955), was probably more responsible than anyone else for developing and popularizing the "capture theory." The theory become so much a part of the orthodoxy that by the mid-1960s a noted economic historian could write, "A continuing dilemna of

regulatory agencies is that they can become vehicles whereby the regulated regulate the regulators in the interest of the regulated - rather than that of the public." Douglas North quoted by Hughes, op. cit., p. 102.

32. John Kenneth Galbraith, The Great Crash, 1929 (New York: Time Incorporated, 1962, first published in 1954), p. 168.

33. The evolution of American thinking on the subject of regulation is traced by Thomas K. McCraw, "Regulation in America: A Review Article," Business History Review, Vol. 49, No. 2, Summer 1975.

34. George Stigler and Claire Friedland, "What Can Regulators Regulate? They Case of Electricity," Journal of Law and Economics, Vol. 5, October 1962.

35. Ibid., p. 11.

36. Peltzman, op. cit., p. 212.

37. According to Peltzman:

> the rational regulator will not levy a uniform tax nor distribute benefits equally. Rather he will seek a structure of costs and benefits that maximizes political returns. This search for political advantage will in turn lead the regulator to suppress some economic forces that might otherwise affect the price structure.... The substitution of political for economic criteria in the price formulation process has several interesting implications which I shall elaborate. It is at the heart of the pervasive tendency of regulation to engage in cross-subsidization - that is, the dissipation of producer rents on sales to some customers by setting below-cost prices to others.

Ibid., p. 231.

38. _Ibid._, p. 217.

39. Stigler, _op. cit._, pp. 4-6.

40. See Stigler, _op. cit._, Peltzman, _op. cit._, and James Q. Wilson, "The Politics of Regulation," in James W. McKie (ed.) _Social Responsibility and the Business Predicament: Studies in the Regulation of Economic Activity_ (Washington, D.C.: The Brookings Institute, 1974).

41. Needless to say, the federal government had to compensate the company. It did so by guaranteeing interest payments on a new bond issue. H.A. Innis, _A History of the Canadian Pacific Company_ (Toronto and Buffalo: University of Toronto Press, 1971, first published in 1923), p. 182.

42. John W. Dafoe, _Laurier: A Study in Canadian Politics_ (Toronto: McClelland and Stewart, 1963, first published in 1922), p. 24.

43. Richard Posner, "Theories of Economic Regulation," _Bell Journal of Economics and Management Science_, Vol. 5, No. 2, Autumn 1974, p. 341.

44. Hughes, _op. cit._, p. 3.

Appendix A: Indices of Growth

	GNP (1935-39 prices = 100)					Government Expenditures (1935-39 = 100) ($ millions)		Transportation - Railways		Manufacturing Primary and Secondary (1935-39 = 100)		Wheat Economy	
Year	Population (000's) (1)	Real GNP ($ millions) (2)	Real GNP Per Capita (3)	Compound Average Growth of Real GNP by Decade (4)	Agriculture as a percent of GNP (5)	Real Federal Government Expenditure ($ millions) (6)	Federal Expenditure as a Percent of Total Government Expenditure (7)	Miles Completed (8)	Government Aid ($ millions) (9)	Gross Value of Production ($ millions) (10)	Persons Employed (000's) (11)	Production (000's of bushels)[3] (12)	Wholesale Price per Bushel at Fort William for No. 1 Northern (cents)[5] (13)
1867	3,463			2.76 (1861-70)		18		2,278					180
1870	3,625	764	211	2.53	33.3	24		2,617	49.3 (1875)	274.7	181.7	16,724	127
1880	4,255	981	231	3.37	32.0	46		7,230	100.1	422.7	248.0	32,350	118
1890	4,779	1,366	286	3.23	27.0	58		14,004	178.5	674.5	351.1	42,223	90
1900	5,301	1,877	354	5.56	26.7	89		17,824	206.8	856.7	422.8	55,572	74.6
1910	6,988	3,085	441	1.74	22.8	157	81.2	31,429[1]	182.0[2]	1,527.1	510.0	132,078	94.2
1920	8,556	3,844	449	2.92	19.4	266	81.5	51,175	217.7	1,810.3 (1919)	576.4	263,189	199.4
1930	10,208	5,199	501	2.76 (1931-40)	11.0	397	66.0	56,585	218.6	3,113.1 (1929)	614.3	566,726[4] (1928)	124 (1928)
										2,234.4 (1933)	468.4 (1933)	81,892 (1933)	68 (1933)
1939	11,267	6,743 (1940)	592 (1940)		10.3 (1940)	686	66.7	56,601	218.9	3,500.8	657.7	520,623	76.4

Notes to Appendix A

1. Up to, and including, 1900, figures are for miles completed and thereafter for miles in operation.
2. Figures for 1910 and thereafter do not include direct investment in railways that were later given to private companies. For example, as part of the agreement with the Canadian Pacific, the federal government gave the company some lines it had built in the 1870s.
3. Data for wheat production and prices is often given on a crop year basis, e.g. 1870/71. The figures given here, for both production and prices, refer to the first year of the crop year; i.e., figures for 1870 refer to the 1870/71 crop year. This has required rearranging the figures given in Urquhart and Buckley. Their production figures refer to the preceding year.
4. The 1928 crop was the largest until the 1950s.
5. The 1910 price is the first one for Fort William (now Thunder Bay). Earlier prices are for No. 1 Northern at Winnipeg (1890 and 1901), Winter No. 2 white at Toronto (1870 and 1880) and fall wheat at Toronto (1867).

Sources

1. M.C. Urquhart and K.A.H. Buckley, Historical Statistics of Canada (Toronto: Macmillan of Canada, 1965) for columns 1 (p. 14); 8 (pp. 528 and 532); 9 (pp. 526 and 531); 11 (p. 463); 12 (pp. 363-364); and 13 (pp. 359-360).
2. William L. Marr and Donald G. Patterson, Canada: An Economic History (Toronto: Macmillan of Canada, 1980) for columns 2 and 3 (p. 6); 4 (p. 19); and 5 (p. 22).
3. Richard M. Bird, The Growth of Government Spending in Canada (Toronto: Canadian Tax Foundation, 1970) for columns 6 and 7 (pp. 268-270).
4. G.W. Bertram, "Economic Growth in Canadian Industry, 1870-1915: The Staple Model," in W.T. Easterbrook and M.H. Watkins (eds.) Approaches to Canadian Economic History (Toronto: McClelland and Stewart Limited, 1967) for column 10 (p. 81).

APPENDIX B: The Growth of Regulation

Year	Federal Regulatory Legislation	Federal Non-Regulatory Action	Related Events
1867	Bank Act		
1868	Insurance Act Railway Act		
1870			
1872	Trade Unions Act		
1873			Pacific Scandal
1874	General Inspection Act		Liberal win election in 1874
1876		Completion of Government owned International Railway linking Maritimes and Quebec City	
1878			Conservatives under Macdonald returned to power
1879		Dept. of Railways and Canals created	Introduction of high tariffs - National Policy
1880		Agreement with C.P.R. to construct transcontinental railway	
1884	Adulteration of Food Act		Ontario passed first Factory Act
1886	Prohibition of Margarine Act		
1887			U.S. Interstate Commerce Commission created
1889	An Act to Prevent Combinations in Restraint of Trade		

Year	Federal Regulatory Legislation	Federal Non-Regulatory Action	Related Events
1890			
1896			Liberals under Laurier form Government
1897	Crow's Nest Pass Agreement Act		
1898		Dept. of Trade and Commerce created	
1900	Manitoba Grain Act	Dept. of Labour created	
1903	Railway Act Board of Railway Commissioners created		
1904		Agreement with Grand Trunk to construct transcontinental railway	
1905			Conservatives elected in Ontario. Saskatchewan & Alberta created
1906			Ontario creates Power Commission
1907	Electricity and Fluid Exportation Act Meat and Canned Foods Act Industrial Disputes Investigation Act		
1908	Railway Act Amended B.R.C. given jurisdiction over telephone companies Patent Medicine Act	Civil Service Commission created	
1910	Combines Investigation Act		

Year	Federal Regulatory Legislation	Federal Non-Regulatory Action	Related Events
1911			Conservatives under Borden form Government
1912	Canada Grain Act Board of Grain Commissioners created		
1914	Loan Companies' Act Trust Companies' Act		
1916		Business Profits Tax Act	
1917	Migratory Birds Act Creation of War-Time Regulatory Agenices	Income War Tax Act	
1918			British Columbia passes first minimum wage Act
1919	Board of Commerce Act Combines and Fair Prices Act, Bankruptcy Act	Dept. of Health created Canadian National Railways incorporated	
1920	Food and Drugs Act		
1921			Liberals under King form Government 65 Progressives elected
1922			J.C.P.C ruled that the Board of Commerce Act and Combines and Fair Prices Act were ultra vives
1923	Combines Investigaton Act strengthened		
1925	Crow Rates became part of Railway Act		
1927	Maritime Freight Rates Act	Old Age Pensions Act	British Columbia Produc Marketing Act

Year	Federal Regulatory Legislation	Federal Non-Regulatory Action	Related Events
1930		Resources transferred to Prairie Provinces	Election of Conservatives under Bennett
1932	Broadcasting Act		J.C.P.C. decisions establishing federal authority to regulate broadcasting and aeronautics
1933			CCF founded
1934	Bank of Canada Act Natural Products Marketing Act	Royal Commission on Price Spreads	
1935	"Bennett New Deal" Wheat Board Act		Return of Liberals under King
1936		Dept. of Transport founded	
1937			J.C.P.C. decisions on federal Marketing Act and Bennett New Deal
1938	Transport Act Board of Transport Commissioners replaced B.R.C.		